in the

Supreme Court

of the

United States

October Term, 1977

No. 77-1677

GERALD RICHMAN,

Petitioner,

vs.

ROBERT L. SHEVIN,
Attorney General of the State of Florida,
RICHARD E. GERSTEIN,
State Attorney for the Eleventh
Judicial Circuit and the ELECTIONS
COMMISSION of the State of Florida,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

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The petitioner, Gerald Richman, respectfully prays that a writ of certiorari issue to review the judgment and

opinion of the Florida Supreme Court in this case. The judgment prevents a lawyer from contributing to judicial candidates through a Bar Association's "Judicial Trust Fund" (Fund). The Fund was established to eliminate any appearance of impropriety by insulating the lawyer from direct financial contact with judicial candidates. The constitutionality of state election laws is challenged.

OPINIONS BELOW

The opinion of the Florida Supreme Court dated December 22, 1977, is reported at 354 So. 2d 1200 and is set forth in the appendix.

JURISDICTION

The opinion of the Florida Supreme Court was filed on December 22, 1977. A timely motion for rehearing was filed and that motion was denied by order of the Florida Supreme Court dated February 28, 1978. This petition for certiorari is filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First and Fourteenth Amendments to the United States Constitution. The relevant portions of those amendments are:

First Amendment:

> Congress shall make no law . . . abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Fourteenth Amendment:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; . . . nor deny to any person within its jurisdiction the equal protection of the laws.

QUESTIONS PRESENTED

1. Whether the prohibition on political contributions through the Trust Fund escrow arrangement is an infringement of First Amendment rights of free speech.

2. Whether the prohibition on contributions through the Trust Fund escrow arrangement deprives the petitioner of First Amendment rights of free association.

3. Whether the Florida election law is overbroad, prohibiting conduct which is constitutionally protected without serving a compelling state interest.

STATEMENT OF THE CASE

This case was brought by Gerald F. Richman, President of the Dade County Bar Association, a voluntary bar association which has established a Judicial Trust Fund ("Fund") to insulate lawyers from direct financial contact with judicial candidates and to eliminate the appearance of impropriety in the contributor relationship between judicial candidates and lawyers. Mr. Richman has continuing duties relating to the Judicial Trust Fund and he utilizes the Fund in his contributions to judicial candidates.

Operation of the Fund. The Judicial Trust Fund, designed to prevent corruption, works in the following way:

1. Each lawyer who contributes through the Fund agrees not to otherwise contribute to judicial candidates.

2. Judicial candidates who elect to participate in the Fund agree not to accept any contributions from lawyers except through the Fund.

3. Although each lawyer could legally contribute as much as one thousand dollars to each candidate in each election, no lawyer has given or will be permitted to give that much money through the Fund.[1]

[1]At no time has any lawyer contributed more than sixty-nine dollars and fifty-four cents ($69.54) to any candidate through the Judicial Trust Fund. The limitation is enforced by the Trust Fund.

4. There is enforcement of the restrictions and escrowed funds are returned to persons who contribute directly to judicial candidates. See affidavit of Johnnie Ridgely, Executive Secretary of Dade County Bar. (A-41.)

5. Trustees[2] distribute the money to judicial candidates who elect to participate and are found qualified by a sixty per cent vote in the poll conducted by the Dade County Bar Association. This poll is made of all lawyers, not just the members of the association. Distributions through the Fund are therefore determined not by the lawyers contributing to the Fund, nor by the Trustees, nor by the officers or the members of the voluntary bar association which set up the Fund, but rather by a poll of all lawyers admitted to the bar in Dade County, over four thousand persons. (A-41.)

6. Where more than one candidate in a race receives at least sixty per cent "qualified" votes in the judicial poll, money goes to all such qualified candidates.

7. Judicial candidates receiving money through the fund report the *pro rata* share of funds contributed by each participant as individual contributions. Thus, there is full disclosure of the contributor's name, the amount of his contribution and the other information required by law.

[2]The Trustees, including the Chief Judge of the Circuit or his designee, are obligated to disburse funds to qualified candidates. They function as escrow agents.

8. Full disclosure has been made of all money distributed through the Fund. No negative reaction to these reports was made by the state authorities prior to the investigation conducted by the Florida Elections Commission.[3]

Example of Trust Fund in Operation. It may be helpful to repeat the essential facts in the form of an actual example:

When the petitioner, Gerald Richman, joined with other lawyers to participate in the Judicial Trust Fund, he voluntarily contracted away his right to contribute as much as one thousand dollars to each judicial candidate and joined with other lawyers who feared the appearance of impropriety which might result from direct contributions from lawyers to judges.

Still recognizing his duty to support qualified candidates,[4] Mr. Richman placed one hundred fifty dollars

[3]The Judicial Trust Fund also received considerable press attention including favorable editorial comment. *See,* White, "New Approach to Financing Judicial Campaigns," 59 *ABA Journal* 1429 (Dec. 1973); Richman, "A New Solution to an Old Problem," 50 *Fla. Bar J.* 478 (Oct. 1976).

[4]Canon 8 of the Code of Professional Responsibility states, "A Lawyer Should Assist in Improving the Legal System" and EC 8-6 states:

> Judges and administrative officials having adjudicatory powers ought to be persons of integrity, competence, and suitable temperament. Generally, lawyers are qualified, by personal observation or investigation, to evaluate the qualifications of persons seeking or being considered for such public offices, and for this reason they have a special responsibility to aid in the selection of only those who are

in escrow with the Judicial Trust Fund to be distributed in the next election to all judicial candidates found qualified in the poll of all Dade County lawyers. Mr. Richman agreed not to otherwise contribute to judicial candidates.

In the election of 1976, John H. Smith qualified as a candidate for County Judge and subscribed to the principles of the Fund. He agreed to forego any lawyer contributions except through the Trust Fund, knowing that his failure to be rated "qualified" in a poll of four thousand, six hundred lawyers in Dade County would foreclose any opportunity to collect funds from lawyers.

Judge Smith was found qualified and did receive $1700 through the Trust Fund. On September 3, 1976, his campaign reported petitioner's contribution,[5] as follows:

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[4](Continued)

> qualified. It is the duty of lawyers to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges. Lawyers should protest earnestly against the appointment or election of those who are unsuited for the bench and should strive to have elected or appointed thereto only those who are willing to forego pursuits, whether of a business, political, or other nature, that may interfere with the free and fair consideration of questions presented for adjudication. . . .

---

[5]Under Florida law, the petitioner was entitled to contribute this $5.21 and an additional $994.79 to the judicial candidate. The voluntary limitations of the Trust Fund thus work to drastically reduce the level of contributions without interfering with the state policy of reporting contributions and limiting contributions.

> Contributions in the amount of $5.21 were received from the following contributors to the Dade Judicial Trust Fund. All contributors to the Dade Judicial Trust Fund are lawyers with their principal place of business in Miami, Florida.
>
> . . .
>
> 24. Richman, Gerald F. 2333 Brickell Avenue, Miami, Florida
>
> . . .

If a candidate had opposed John H. Smith and had also been found qualified, he would have received the same contribution from Gerald Richman and reported that contribution.

Thus, as the State has stipulated in this case (A-45), the Judicial Trust Fund operated as an *escrow* arrangement through which participating lawyers made individual, reported contributions to candidates found qualified in the bar poll.

The State Questions the Fund. The operation of the Fund was first called into question by the Florida Elections Commission. On February 15, 1977, the Elections Commission voted a "Notice of Determination," which concluded that the Trust Fund was a "political committee" and "therefore any contribution in excess of one thousand dollars were prohibited by Florida law." (A-57.) The Notice of Determination, which named the petitioner, was forwarded to Florida prosecuting and enforcement authorities.

Federal Questions Raised in Trial Court. The petitioner filed his declaratory judgments action, expressly raising First and Fourteenth Amendment issues.[6]

[6]Paragraph 17 of the complaint placed the following questions before the Cou along with other questions not pertinent here:

a. Whether there is any compelling state interest which can justify the application of the restrictions on contributions to prevent the Judicial Trust Fund from distributing more than one thousand dollars to any candidate where the operation of the fund insures against corrupt activity?

. . .

c. If the Judicial Trust Fund is found to be a "political committee," whether the restrictions of Section 106.08 are constitutional as applied to the Judicial Trust Fund?

d. If the Judicial Trust Fund is found to be a political committee under the terms of Chapter 106, whether the provisions of Chapter 106 are unconstitutionally overbroad, thereby infringing on the First Amendment of the United States Constitution?

e. If the Judicial Trust Fund is found to be a "political committee," whether the classifications of Chapter 106 are constitutional under the equal protection provisions of the Florida Constitution and the United States Constitution since certain associations of citizens (political parties, for instance) are permitted unlimited contributions and other associations, such as the Judicial Trust Fund, are limited in contributions?

. . .

The trial judge considered the case on the basis of a factual stipulation, various affidavits and a limited amount of testimony. In his ruling on a summary judgment motion, he analyzed the problem solely as a question of police power, stating:

> It is thus obvious that the question of contributions and the amount thereof is a legitimate concern of the Legislature. The means employed by the Legislature to accomplish the

[6](Continued)

h. Whether the disclosures of all contributors and of all distributions made by the Judicial Trust Fund demonstrated good faith compliance with all constitutional elements of the Florida Election Law?

. . .

j. If independent expenditures are prohibited, whether the prohibitions are unconstitutional as abridgements of the plaintiff's rights of free speech and association?

. . .

l. Whether the different treatment of associations of citizens under Chapter 106 is a reasonable classification under the Florida Constitution and the United States Constitution where political parties are forbidden from participation in judicial elections?

m. Whether the barrier imposed on plaintiff's free speech during the pendency of Elections Commission proceedings is constitutional under the First and Fourteenth Amendments of the United States Constitution and Article I, Section 4 of the Florida Constitution?

(A-37-40).

. . .

public good in an area of vital concern to the Legislature should be left to that body and Courts should not intrude unless it can be clearly established that the means employed to accomplish that good violate fundamental rights. From a full review and analysis of the question presented, we are unable to discern that the means employed or the limitations imposed in the statutes under consideration are overly broad. It is the opinion of this Court that the Dade County Judicial Trust Fund clearly falls within the definition of political committee as defined by the statute and that such inclusion does not result in overbroadness in the application of the statute.

(A-52.)

After stating that the statute was not overbroad, the trial court continued with a finding in the following language:

> It certainly appears to this Court that the plan devised by the Dade County Bar accomplishes the purpose for which it was designed and may, in fact, offer a more complete solution to a complex problem than the solution adopted by the Legislature.
>
> (A-53).

The petitioner sought review of the trial court judgment in the Florida Supreme Court, assigning as error

and arguing the constitutional questions which are raised here.[7]

Florida Supreme Court Opinion. The Florida Supreme Court issued an opinion affirming the trial court and adopting the police power analysis of the trial court. ("We agree entirely with the holding and the rationale . . . of the trial court . . . ." 354 So. 2d at 1203.) A petition for rehearing was denied.[8]

Thus, both the trial court and the state's highest court found the statute not to be constitutionally overbroad even though "[i]t certainly appears . . . that the plan devised by the Dade County Bar accomplishes the purpose for which it was designed and may, in fact, offer a more complete solution to a complex problem than the solution adopted by the Legislature," 354 So. 2d at 1203, quoting the trial court opinion.

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[7]The assignments of error included, among others, the following two:

> The Court erred in finding that the Florida Election Laws as construed to apply to the Judicial Trust Fund are constitutional under the United States Constitution.
>
> The Court erred in holding that the "means employed" by the legislature were not "overly broad."

[8]The petition for rehearing pointed out a number of factual errors in the court's opinion. Those errors are not central to the argument in this petition and therefore will not be restated here. The petition for rehearing and the order denying the petition appear in the appendix, A-16, A-25.

REASONS FOR GRANTING THE WRIT

I.

A PROHIBITION OF CONTRIBUTIONS THROUGH THE JUDICIAL TRUST FUND ESCROW ARRANGEMENT VIOLATES THE PETITIONER'S FIRST AMENDMENT RIGHTS OF FREE SPEECH.

This case involves important principles of First Amendment law and the application of the recent United States Supreme Court decision in *Buckley v. Valeo,* 424 U.S. 1 (1976). The petitioner does not challenge the constitutionality of state contribution limitations but does challenge the imposition of contribution limitations on the Judicial Trust Fund, an escrow arrangement which has no potential for corruption.

The opinion in *Buckley v. Valeo* stated:

> The Act's contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities. Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people." . . . Although First Amendment protections are not confined to "the exposition of ideas," . . . "there is practically universal agreement that a major purpose of th[e] Amendment was to protect the free discussion of governmental affairs, . . . of course includ[ing] discussions of candidates. . . ." . . . This no more than reflects our "profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open," . . . . In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation. As the Court observed in Monitor Patriot Co. v. Roy, 401 U.S. 265, 272, 28 L. Ed. 2d 35, 91 S.Ct. 621, 625, (1971), "it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office."
>
> 424 U.S. at 14-15.
> (Citations omitted
> where indicated.)

Recognizing the rights to make political contributions, the *Buckley* decision nevertheless upheld the contribution limitations in the federal law:

> Yet, it is clear that "[n]either the right to associate nor the right to participate in political activities is absolute." . . . Even a " 'significant interference' with protected rights of political association" may be sustained *if the State demonstrates a sufficiently important interest and employs*

means closely drawn to avoid unnecessary abridgment of associational freedoms. . . .

424 U.S. at 25.
(Emphasis added,
citations omitted.)

The "sufficiently important interest" present in *Buckley* was, "The prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office." 424 U.S. at 26, citations omitted.

The starting point for First Amendment questions is its own clear language that no law shall be adopted restricting the freedom of expression or freedom of association. The state is permitted to regulate only where a compelling state interest can be demonstrated and then only by the least drastic means calculated to achieve the legitimate purposes of that compelling state interest.

In the present case, the only attempt to demonstrate a "sufficiently important interest" to support the restriction of contributions through the Judicial Trust Fund is that advanced in *Buckley*, that is, the possibility of corrupting or appearing to corrupt "clearly identified candidates" by contributions of money greater than one thousand dollars per person to any individual candidate.

There is no contention by the State that any candidate ever received any greater amount than $69.54 from any individual through the Judicial Trust Fund nor is it disputed that the Fund operates to prevent any

contribution which violates the threshold of potential corruption established by the State. Further, the individuals contributing have obligated themselves not to contribute any other funds to the judicial candidates and this obligation has been enforced.[9] (See Ridgely affidavit, A-41-44.)

The possibility of a corrupting influence is entirely dissipated when the distribution of the money is determined, not by the trustees, not by the voluntary bar association, not even by the contributors to the Judicial Trust Fund, but rather by a poll of all members of the profession practicing in the county, 4,601 persons. The lawyers participating in the Fund have agreed to be insulated from any personal control over the escrowed funds. The distribution is controlled entirely by the results of the judicial poll conducted among thousands of lawyers, most of whom do not participate in the Fund.

This absence of control is combined with personal responsibility for the contribution. The lawyer's in-

[9]The Florida courts reacted to these facts with a police power analysis, concluding that the state legislature had the power to regulate elections. In this decision, the Florida Supreme Court made the same mistake that was noted in this Court's review of *Buckley v. Valeo*, 519 F.2d 821 (D.C. Cir. 1975), for it,

> failed to give the legislation the critical scrutiny demanded under accepted First Amendment and equal protection principles.
>
> 424 U.S. at 11.

The importance of First Amendment analysis was restated in *First National Bank of Boston v. Bellotti*, ___ U.S. ___ (1978) which referred to "the exacting scrutiny necessitated by a state-imposed restriction of freedom of speech."

dividual name is reported by the judicial candidate. The reported amount counts against the state limitation of one thousand dollars per individual and the state may prosecute for violation of that limitation. Section 106.08, Florida Statutes.

The irony is that the lawyer who contributes through the escrow arrangements of the Fund will never approach the one thousand dollar level and no corruption is possible.

The State of Florida has set the "threshold level" of corruption by contributions at one thousand dollars and it infringes the petitioner's rights of free speech to deny him the right to contribute five dollars and twenty-one cents to John H. Smith merely because the Trust Fund escrow arrangement is used.

II.

PROHIBITION OF CONTRIBUTIONS THROUGH THE JUDICIAL TRUST FUND ESCROW ARRANGEMENT VIOLATES THE PETITIONER'S FIRST AMENDMENT RIGHT OF FREE ASSOCIATION.

Equally important in this case is the right of association. The petitioner and like-minded individuals have banded together to advance the idea that lawyers can fulfill their obligations to support qualified judicial candidates without risking the appearance of personal influence that accompany the direct lawyer-to-judge contribution.

As construed by the Florida Supreme Court, the Florida election law now prohibits individuals from joining with others to escrow money to support judicial candidates who are found to be qualified in a poll of all lawyers in the circuit.

The holding of the Florida Supreme Court prevents any lawyer from contributing through this escrow device after the fund has aggregated funds equalling one thousand dollars per candidate found qualified. Thus, the state law deprives lawyers of their right to join with others in escrowing even though the individual names are reported and all persons are subject to the contribution limitation.

As this Court stated in *Kusper v. Pontikes*, 414 U.S. 51, 56 (1973):

> There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of "orderly group activity" protected by the First and Fourteenth Amendments.

The application of the Florida "political committee" theory to the Judicial Trust Fund operates to deny the petitioner and others of their right of free association where the exercise of that right is not injurious to any state policy.

For practical reasons, the denial of the right of association also renders the Judicial Trust Fund and the ideas it represents a nullity. The judicial candidate presented with the Trust Fund idea must believe in the practicality of the Fund as well as its idealism. Dade County is the most heavily populated county in the State of Florida and judicial campaigns can be expensive. It is unlikely that candidates can be enticed to join the Fund if the total which can be received through the Fund is one thousand dollars. Under Florida law, a single lawyer is authorized to give that amount. Section 106.08, Florida Statutes.

The successful execution of the Judicial Trust Fund requires free association of lawyers who are idealistic enough to contract away the political influence which the state will permit and to participate in the political selection of judges only through the escrow arrangement. This arrangement completely erases any potential for influencing judges. It is also essential that enough lawyers participate to make this idealism succeed.

The State has limited this right of association and, if upheld, this restriction will bring an end to an innovative and idealistic experiment.

III.

THE FLORIDA STATUTE IS OVERBROAD.

Florida may have a legitimate interest in controlling campaign contributions which tend to corrupt and it may also control political committees, but the extension of the political committee concept to this escrow arrangement of individually reported contributions constitutes a violation of the petitioner's free speech and associational rights. The legitimate interest, therefore, "cannot justify the device chosen to effect its goal," *Kusper v. Pontikes*, 414 U.S. 51, 61 (1973).

Even where a constitutional purpose can be shown, the laws must be narrowly drawn to accomplish the purpose and should not infringe on any rights except those necessary to accomplish the objective. This is emphasized in *Buckley v. Valeo*, which states that any state action to protect a "sufficiently important interest" may be accomplished only by a "means closely drawn to avoid unnecessary abridgment of associational freedoms," 424 U.S. at 25. This "least drastic means" requirement is particularly important in First Amendment cases. In *Cantwell v. Connecticut*, 310 U.S. 296 (1940), the Court reversed a conviction of inciting a breach of the peace under a statute which imposed punishment for a wide variety of acts, some constitutionally protected and other not protected. The Court held that, in dealing with these rights, it is the duty of the state to provide "a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State," 310 U.S. at 311.

In this case, overbreadth is obvious for the state courts have found that the Fund "may, in fact, offer a more complete solution" to the "complex problem," 354 So. 2d at 1203, quoting the trial court opinion.

Overbreadth is not essential to the vindication of any compelling state interest, for "less drastic" means are available. For instance, the federal act governing elections accommodates the practice of "earmarking" or designating" contributions.[10]

The present statute works a mischief for it will prohibit not only the evils of potential corruption but also the rights of citizens to freely associate to prevent corruption. If so read, the statute is overbroad.

It has been demonstrated that the Judicial Trust Fund provides a greater protection against potential corrupt practices than the Florida election laws as construed by the Florida Supreme Court. Laws which operate to prohibit the petitioner's freedom of association and freedom of speech where there is no possibility of corruption or the appearance of corruption are overbroad and thereby unconstitutional.

---

[10]The Federal Election Campaign Act of 1971, as well as the regulations of the Federal Elections Commission, appears to accommodate the principle of "earmarked contributions." *See* 2 U.S.C. §441(a)(8) (Cum. Supp. 1977), 11 C.F.R. §110.6 (1977). Earmarked contributions may be made under the federal scheme through "designation, instruction, or encumbrance . . . which results in all or any part of a contribution . . . being made to . . . a clearly identified candidate." 11 C.F.R. §110.6. If these regulations were adopted in Florida or if the Florida "political committee" definitions were not so broadly construed by the Florida courts, the petitioner would not be in danger of prosecution.

The principles of *Buckley v. Valeo* do allow the legislature to limit contributions at the one thousand dollar level where this is necessary to prevent corruption or the appearance of corruption. However, the limitation, as applied to the escrow technique of the Judicial Trust Fund, is unconstitutional, for the alleged objectives of the state's asserted compelling state interest — to prevent corruption — are fulfilled by the Judicial Trust Fund.[11]

The means here chosen by Florida go far beyond legitimate constitutional parameters. The obvious and legitimate state purpose could have been achieved in alternative ways to the full extent needed for the achievement of that purpose without the imposition of the onerous restrictions here imposed on the Dade County Bar Association Judicial Trust Fund.

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[11]The petitioner sought a construction of state law which would avoid the constitutional questions now raised. The argument made before the Florida courts featured the contention that the Judicial Trust Fund, an escrow arrangement for fully reported individual contributions, did not come under the definition of "political committee." This argument is now foreclosed by the construction of Florida's election laws by the state's highest court. *Richman v. Shevin*, 354 So.2d 1200 (Fla. 1978).

CONCLUSION

For the reasons stated above, a writ of certiorari should issue to review the judgment and opinion of the Florida Supreme Court.

S/
Talbot D'Alemberte

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing Petition for a Writ of Certiorari and appendix were furnished by United States Mail to: Robert L. Shevin, Attorney General; and James Whisenand, Deputy Attorney General, The Capitol, Tallahassee, Florida; and Stephen Marc Slepin of Slepin and Schwartz, 1311 Executive Center Drive, Tallahassee, Florida 32301, Attorneys for Respondents, this 24 day of May, 1978.

S/
Talbot D'Alemberte

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Appendix

Gerald F. RICHMAN, Appellant,

v.

Robert L. SHEVIN, etc., et al., Appellees.

No. 51765.

Supreme Court of Florida.

Dec. 22, 1977.

Rehearing Denied Feb. 28, 1978.

Talbot D'Alemberte of Steel, Hector & Davis, Miami, for appellant.

Robert L. Shevin, Atty. Gen., and Richard A. Hixson, Asst. Atty. Gen., and Stephen Marc Slepin of Slepin & Schwartz, Tallahassee, for appellees.

KARL, Justice.

This cause is before us on direct appeal to review the final judgment of the Circuit Court in and for Leon County upholding the constitutionality of certain portions of the election law, Sections 106.011(2) and 106.08(1), Florida Statutes (1975), as they apply to the Dade County Judicial Trust Fund, thereby vesting jurisdiction in this Court pursuant to Article V, Section 3(b)(1), Florida Constitution. *Snedeker v. Vernmar, Ltd.*, 151 So.2d 439 (Fla.1963).

The primary question presented for review in this cause is whether the Dade County Judicial Trust Fund is a "political committee" within the definition of Section 106.011(2), Florida Statutes (1975), and as utilized in Section 106.08, Florida Statutes, (1975), and if so, whether Section 106.011(2) is unconstitutionally overbroad.

Because of the relationship of lawyer and judge and the peculiar problems wrought by a judicial candidate seeking campaign financing, the Dade County Bar Association devised the Dade County Judicial Trust Fund in 1972, the declared purpose of which is to receive and distribute voluntary contributions from members of The Florida Bar who pledge not to make any other monetary contribution, either directly or indirectly to any incumbent judge or candidate for judicial office other than the contribution to the fund. These funds are to be distributed to "Fund Qualified" judicial candidates[1] in accordance with the formula set out in the

[1]Section 10 of the trust agreement provides:

"10. All contributions to the fund, other than monies expended to publish biographical sketches as set forth in paragraph 15, shall be distributed by the Trustees of the fund in accordance with the following formula not later than seven days from the date of receipt and certification of the judicial poll propounded to all members of the Bar maintaining offices in Dade County, by the Dade County Bar Association;

"a. A 'Fund Qualified' candidate is defined to be a candidate who meets the requirements set forth herein for receipt of monies from the Trust Fund.

"b. All unopposed candidates or unopposed incumbents who receive qualified votes totaling at least 60% of

the total number of qualified and unqualified votes as to their candidacy and receive not more than 85% 'don't know' votes of the total number of votes cast for their candidacy shall be entitled to share pro-rata in the distribution of funds along with all other Fund Qualified candidates up to the amount of their qualifying fees and shall apply funds thus received only to payment of the qualifying fee. Such unopposed candidates or incumbents shall specifically agree and pledge to return to any donor, whether or not such donor be a member of The Florida Bar, any funds that have been received by said unopposed candidates or incumbents to the extent that such funds exceed the amount of the qualifying fee less the amount of monies received from the Trust Fund.

"c. To be eligible for contributions from the Trust Fund a candidate for judicial office in a contested race (1) must receive at least 60% qualified votes of the total number of qualified and unqualified votes cast towards his candidacy; and (2) must receive not more than 85% 'don't know' of the total number of votes cast toward his candidacy.

"d. The Trustees, based upon the above formula, shall then determine the total number of divisions in which there is at least one candidate, either opposed or unopposed, who is Fund Qualified to receive contributions from the Fund in the divisions of the Third District Court of Appeal of Florida, and the Circuit Court and the County Court of the Eleventh Judicial Circuit. The total funds of the Trust Fund received seven days from the date of the certification of the judicial poll shall then be prorated among such divisions provided, however, that 25% of the total funds received shall first be allocated to the County Court divisions and the remainder to all other eligible divisions. Should the funds received for each of those divisions exceed the qualifying fee for said divisions, the excess of funds over and above the total amount of the qualifying fees shall then be redistributed pro-rata to all divisions in which there are opposed Fund Qualified candidates.

trust agreement. Pursuant to the terms of the trust agreement, the trust is administered by five trustees who act as escrow agents. The method of distribution of funds to candidates is based upon the poll conducted by the Dade County Bar Association. Each contributor to the fund signs a pledge, and to be eligible for contributions through the trust fund, each candidate must sign a pledge that he will not directly or indirectly solicit or accept contributions from members of The Florida Bar and that he will apply all monies received from the fund only toward campaign expenses. The fund has filed campaign treasurer reports with the Secretary of State.

On September 8, 1972, the Attorney General wrote a letter to Judge Nathan, who had written to inquire whether the Bar Association could contribute $1,400 to each candidate, and opined that the maximum allowable contribution by the trust fund to each judicial candidate would be $1,000.

In October, 1974, in response to his inquiry, the Secretary of State wrote Judge Sepe advising him that the Dade County Bar Association could not lawfully make a contribution of $1,800 to him as a candidate for circuit judge since the maximum contribution allowed by Section 106.08(1)(a) or (b), Florida Statutes (1975), is $1,000.

"e. As to each such division in where there is only one Fund Qualified opposed candidate, said candidate shall received [sic.] the entire amount of funds allocated to his division. As to each division in which there is more than one Fund Qualified candidate, the funds for that division shall be distributed pro-rata to all such Fund Qualified candidates in that division."

On August 6, 1975, appellant, plaintiff below, President of the Dade County Bar Association and formerly co-chairman of the trust fund, wrote to the Department of State expressing doubts as to the forms to be filed with the Secretary of State since they did not appear appropriate for this type of organization.

Apparently, a complaint was made to the Florida Elections Commission relative to the Dade County Trust Fund. Appellant voluntarily appeared before the Commission to respond to questions and to produce all documents requested. At the conclusion of the proceedings, the Commission issued a notice of determination on February 14, 1977, finding that probable cause exists to believe that the Dade Judicial Trust Fund has violated Section 106.08, Florida Statutes (1975), by having contributed as a political committee to candidates in excess of the amounts prescribed by Section 106.08, Florida Statutes (1975), notwithstanding warning of the Attorney General.

Subsequently, appellant filed a complaint for declaratory judgment and injunctive relief against the Attorney General, the State Attorney of the Eleventh Judicial Circuit and the Florida Elections Commission. The complaint alleged that the judicial trust fund has a continuing operation essential to its purpose; that the Dade Bar Association has delayed fund raising in order to cooperate with state officials; that the Trust Fund has funds on hand which it is obligated to distribute; that the Dade County Bar Association has an obligation to indemnify the trustees for any reasonable legal expenses incurred in performance of their duties and is thereby exposed to potential liability in excess of current resources; that because of the investigation by the

Florida Elections Commission and Notice of Determination, the appellant, plaintiff, is in doubt as to the appropriate action to be taken by the Judicial Trust Fund in relation to contributions to the Fund; that the continuing operation of the Trust Fund placed appellant under continuing threat of investigation and legal action with consequent loss of his rights of free speech.

The trial judge entered an order May 3, 1977, determining that the essential issues posed are whether the trust fund is comprehended within the definition of "political committee" as delineated by Section 106.011, Florida Statutes (1975), and, if so, whether said section is unconstitutionally overbroad. As to the question of legitimacy of the state's Election Commission, the court declined to answer it on the basis that this issue was moot. The trial court concluded that the Dade County Trust Fund is a political committee defined by Section 106.011, Florida Statutes (1975), and is subject to the limitations on campaign contributions imposed by Section 106.08, Florida Statutes (1975). The trial court reasoned:

> "While it is obviously true that lawyers occupy an unusual position with respect to judges, this Court is of the opinion that this relationship cannot thereby be classified as unique or singular.
>
> "The Legislature has the undoubted authority to regulate within reasonable bounds the conduct of state elections, including the regulation of campaign contributions. Buckley *(Buckley v. Valeo,* 424 U.S. 1 [96 S.Ct. 612,] 46 L.Ed.2d 659) essentially articulated two

reasons for the propriety in limiting the amount of financial contributions by individuals to potential officeholders: 1. The tendency or possibility to create a quid pro quo relationship and, 2. The creation of an appearance of influence of corruption. It is thus obvious that the question of contributions and the amount thereof is a legitimate concern of the Legislature. The means employed by the Legislature to accomplish the public good in an area of vital concern to the Legislature should be left to that body and Courts should not intrude unless it can be clearly established that the means employed to accomplish that good violate fundamental rights. From a full review and analysis of the question presented, we are unable to discern that the means employed or the limitations imposed in the statutes under consideration are overly broad. It is the opinion of this Court that the Dade County Judicial Trust Fund clearly falls within the definition of political committee as defined by the statute and that such inclusion does not result in overbroadness in the application of the statute.

> "It certainly appears to this Court that the plan devised by the Dade County Bar accomplishes the purpose for which it was designed and may, in fact, offer a more complete solution to a complex problem than the solution adopted by the Legislature. However, as alluded to previously herein, it is not for this Court to determine what is best for the people of the State of Florida but only to determine whether the Legislature, in enacting the laws

under consideration, did so within the confines of legitimate authority. When considered in the light of all of the factors involved, it is our opinion that the Legislature addressed itself to a question of public interest and did so in a proper and lawful manner."

Final judgment was entered May 12, 1977, incorporating by reference the May 3, 1977, order and ordering that "the plaintiff's challenge to the constitutionality of the election laws as the Election Commission would apply them to the Dade County Judicial Trust Fund is not well taken and the Court finds that the challenged statutes are constitutional as applied to the Judicial Trust Fund. . . ."

We agree entirely with the holding and rationale of the final judgment of the trial court in this matter.

Section 106.011(2), Florida Statutes (1975), provides in pertinent part:

"'Political committee' means a combination of two or more individuals, or a person other than an individual, the primary or incidental purpose of which is to support or oppose any candidate, issue, or political party and which accepts contributions or makes expenditures during a calendar year in an aggregate amount in excess of five hundred dollars. Organizations which are determined by the Department of State to be committees of continuous existence pursuant to s. 106.04 and political parties regulated by chapter 103 shall not be considered political committees for the purposes of this chapter. . . ."

Section 106.08(1)(a) provides:

"(1) No person or political committee shall make contributions to any candidate or political committee in this state, in moneys, material, or supplies or by way of loan, in excess of the following amounts:

"(a) To a candidate for countywide office or to a candidate in any election conducted on less than a countywide basis, one thousand dollars."

Appellant argues that the trial court erroneously determined that the Judicial Trust Fund is a political committee since, contends appellant, the purpose of the fund is not to support or oppose candidates but is to establish a method for contributions which will screen out potential abuse and to insulate lawyers, judges and judicial candidates from problems associated with direct campaign contribution and, since there is no discretion in the committee arrangement, to direct contributions to certain candidates. The laudable purpose of this trust fund does not alone justify exemption from the statutory definition of "political committee." On the contrary, the Dade County Trust Fund possesses all of the statutorily delineated elements of a "political committee." The trust fund functions as a combination of two or more persons, is an "other combination of individuals having collective capacity,"[2] accepts contribu-

[2] §106.011(7), Fla.Stat. (1975), defines person as utilized in §106.011(2), Fla.Stat. (1975), as follows:

" 'Person' means an individual or a corporation, association, firm, partnership, joint stock company, club, organization, or other combination of individuals having collective capacity."

tions or makes expenditures during a calendar year in an aggregate amount in excess of $500 and has as its primary or *incidental* purpose to support candidates. Emphasizing the use of the term "incidental purpose" in Section 106.011(2), Florida Statutes (1975), appellee submits, and we agree, that by making distribution to candidates, i. e., contributions, pursuant to the terms of the trust agreement, the trust fund effectually supports candidates for judicial office, and it is immaterial for the purpose of definition of political committee whether the candidates supported have been voted well-qualified or not. Monies paid to candidates from the fund are treated as campaign contributions and are reported accordingly.

The trial court correctly determined that the inclusion of the Dade County Trust Fund within the definition of "political committee" did not render Section 106.011(2), Florida Statutes (1975), unconstitutionally overbroad. Appellant expressly declares that he does not challenge the constitutionality of the contribution limitation but, rather, only questions the imposition of such limitation on the Judicial Trust Fund.

The Legislature is charged with the responsibility and authority of regulating the election process so as to protect the integrity of the political process. These regulations should be reasonable and necessary and not inconsistent with the constitution of this state. *Treiman v. Malmquist*, 342 So.2d 972 (Fla.1977). This Court, in *Bodner v. Gray*, 129 So.2d 419, 421 (Fla.1961), opined:

> "The law places restraints upon all of its citizens in the exercise of their rights and liberties under a republican form of government.

> Such restraints have been found to be necessary in the development of our democratic processes to preserve the very liberties which we exercise. Similar restraints may lawfully be imposed upon individual candidates for public office."

Upholding the contribution limitation in the Federal Election Campaign Act, the Supreme Court of the United States, in *Buckley v. Valeo*, supra, reasoned:

> "In view of the fundamental nature of the right to associate, governmental 'action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.' *NAACP v. Alabama*, supra, 357 U.S. 449, at 460-461, 78 S.Ct. 1163, 2 L.Ed.2d 1488. Yet, it is clear that 'neither the right to associate nor the right to participate in political activities is absolute.' [Cases cited.] Even a '"significant interference" with protected rights of political association' may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms. [Cases cited.]
>
> "Appellees argue that the Act's restrictions on large campaign contributions are justified by three governmental interests. According to the parties and amici, the primary interest served by the limitations and, indeed, by the Act as a whole, is the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large

financial contributions on candidates' positions and on their actions if elected to office. Two 'ancillary' interests underlying the Act are also allegedly furthered by the $1,000 limits on contributions. First, the limits serve to mute the voices of affluent persons and groups in the election process and thereby to equalize the relative ability of all citizens to affect the outcome of elections. Second, it is argued, the ceilings may to some extent act as a brake on the skyrocketing cost of political campaigns and thereby serve to open the political system more widely to candidates without access to sources of large amounts of money.

> "It is unnecessary to look beyond the Act's primary purpose — to limit the actuality and appearance of corruption resulting from large individual financial contributions — in order to find a constitutionally sufficient justification for the $1,000 contribution limitation.
>
> . . . .
>
> "We find that, under the rigorous standard of review established by our prior decisions, the weighty interests served by restricting the size of financial contributions to political candidates are sufficient to justify the limited effect upon First Amendment freedoms caused by the $1,000 contribution ceiling."

Appellant argues that the fund was organized to eliminate the evil and corruption contemplated by the Legislature and, therefore, since the fund serves the same purpose as the statute, the Legislature cannot

regulate in that area. In effect, this argument contends for a usurpation of the legislative function by private individuals who determine in their own judgment how best to regulate matters of public concern. The Legislature, not private individuals, determines what reasonable regulations should be enacted to avoid evil and corruption in the election process. This Court likewise does not legislate by determining the wisdom of legislative policy but, rather, decides whether the legislative regulation comports with the Constitution.

In *Holley v. Adams,* 238 So.2d 401 (Fla. 1970), this Court said:

> "The judiciary will not nullify legislative acts merely on grounds of the policy and wisdom of such act, no matter how unwise or unpolitic they might be, so long as there is no plain violation of the Constitution. [Cases cited.]"

See also *In re Apportionment Law, SJR 1305,* 263 So.2d 797 (Fla. 1972).

We find that Section 106.011(2), Florida Statutes (1975), and Section 106.08, Florida Statutes (1975), are not unconstitutionally overbroad as applied to the Dade County Trust Fund because the Legislature did not exempt organizations who set up their own procedures for policing themselves. The Legislature, in promulgating Section 106.011(2) and Section 106.08, regulating campaign contributions, determined that individuals in a collective capacity should only be permitted to have a limited amount of political clout. Cf. *Buckley v. Valeo,* supra.

Since we conclude that the Dade County Trust Fund is a political committee within the statutory definition, appellant's argument that the trust fund does not violate the statutory proscription against contributions in excess of $1,000 when it exceeds the $1,000 limit because, inter alia, the pro rata contribution to any lawyer has never exceeded $70 is without merit. Appellant's contention is that this arrangement is the same as if an individual gathered contributions from other individuals and delivered them in the same form to a candidate. This is not the case, however, since the contributions from the individuals are commingled by the trustee and since the terms and conditions of the trust agreement as to authorization for contributions to "Fund Qualified" judicial candidates transpose the Dade County Trust Fund from the permissible character of one serving as a conduit for contributions to candidates to a "political committee" which may not contribute in excess of $1,000.

Finally, appellant urges that the method of appointment of the Elections Commission as set forth in Section 106.24(2), Florida Statutes (1975), unconstitutionally infringes on the doctrine of separation of powers in Article II, Section 3, Florida Constitution (1968), and the executive power of appointment in Article IV, Sections 1 and 6, Florida Constitution (1968). Relative to this point, the trial judge ruled that under the particular circumstances of this case, the question was moot. As appears from the record at the time of the declaratory judgment action, there was no justiciable controversy between appellant and the Florida Elections Commission. The action of the Elections Commission had been concluded, and Notice of Determination had been filed by the Commission with the Department

of Legal Affairs pursuant to the dictates of Section 106.27, Florida Statutes (1975). Appellee, Elections Commission of the State of Florida, posits that not only is the question moot because the legal capacity of the Commission has already been passed and exhausted since the matter was no longer within its jurisdiction but also because this issue is extraneous to the resolution of any of the issues outstanding in the cause. We hold that the trial court properly determined that the question as to the constitutionality vel non of the Elections Commission's composition was moot, the issue not being justiciable under the facts of this cause. We, therefore, cannot resolve the question of the constitutionality of the composition of the Elections Commission in the present cause.

Accordingly, for the foregoing reasons, we find that Sections 106.011(2) and 106.08, Florida Statutes (1975), are not unconstitutional as applied to the Dade County Judicial Trust Fund and affirm the judgment of the trial court.

It is so ordered.

OVERTON, C. J., and ADKINS, BOYD, ENGLAND, SUNDBERG and HATCHETT, JJ., concur.

IN THE SUPREME COURT OF FLORIDA

CASE NO. 51,765

GERALD F. RICHMAN,

Appellant,

vs.

ROBERT L. SHEVIN, etc., et al.,

Appellees.

PETITION FOR REHEARING

Pursuant to Florida Appellate Rule 3.14 the appellant, GERALD F. RICHMAN, respectfully moves the Court for rehearing in this cause and shows the Court as follows:

1.

THE COURT HAS COMPLETELY IGNORED THE EQUAL PROTECTION ASPECTS OF THIS CASE

The opinion, page 7 states:

> Appellant expressly declares that he does not challenge the constitutionality of the contribution limitation but, rather, only questions the imposition of such limitations on the Judicial Trust Fund.

This statement is not entirely accurate and is very prejudicial to the appellant's rights to further review. A correct statement is that the appellant does not question the constitutionality of campaign contribution limitations *in the abstract*. There is an express challenge to this statute, however, a challenge which has been raised with the first pleadings. The principle [sic] grounds of this challenge are: (1) it violates the plaintiff's First Amendment rights, (2) there is no demonstration of a "sufficiently important interest" to justify this intrusion into basic rights, (3) it is overbroad in that it regulates not only potential corruption, but also infringes on conduct which is not potentially corrupting and, (4) the statute is discriminatory and therefore violative of the plaintiff's constitutional rights protected by both the Florida Constitution (Article I, Sections 1 and 2) and the Fourteenth Amendment to the Constitution of the United States.

The Court's opinion addresses points one and two above, but ignores point three.[1] This failure to address the equal protection point is particularly important in this case, since,

> (a) The Court's opinion appears to be bottomed on an assumption that the legislature "determined that individuals in a collective capacity should only be permitted to have a limited amount of political clout." (Opinion, page 9).

---

[1]The appellant does not agree with the resolution of these issues but they were addressed. In candor, the appellant concedes that the equal protection argument was not addressed by the briefs but it was urged in oral argument.

(b) The assumption of the opinion is in error, because the legislature has permitted individuals in a collective capacity to have virtually unlimited political clout by permitting multiple political committees, testimonial committees and political party contributions. The legislative limitation applies only to certain types of collective activity and the statute, is, therefore, discriminatory;

(c) The issue of equal protection was addressed in the earliest pleading[2] and has been maintained as an issue throughout these proceedings. The Court's language makes it appear that the statute is not challenged but only the application of the statute.

At the risk of repetition, it should be stated again that the constitutionality of campaign contribution limitations are not challenged where that limitation serves an overriding governmental interest, where it is narrowly drawn and where it is non-discriminatory. The challenged statute serves no compelling state interest, is overbroad and is discriminatory. It is, therefore, unconstitutional.

[2]The original complaint squarely placed the equal protection question as basis for constitutional attack. See paragraph 17(d). (R-9).

II.

THE COURT ANALYZES THE FIRST AMENDMENT POINT IN TERMS OF "POLICE POWER" BUT DOES NOT IDENTIFY A COMPELLING STATE INTEREST

The Court quotes from the seminal case, *Buckley v. Valeo,* 424 U.S. 1 (1976) which held that the First Amendment interests inherent in campaign contributions can be displaced only after the demonstration of sufficiently important interests. This test, frequently referred to as the "compelling state interest" or "overriding government interest" test may be the proper test and, by quoting from *Buckley,* the Court appears to approve that test.

This standard is *not* applied, however, for the state no where identifies such an interest. Indeed, the Court appears to analyze this case on a police power basis, entirely neglecting the essential First Amendment analysis. Note the language on page 9 of the opinion which refers to the legislature's authority to enact legislation "to avoid evil and corruption." What evil and corruption?[3] Where First Amendment values are involved, as they are here, the legislature may not use any means to regulate but may only use the least drastic means. *Buckley v. Valeo* touches this point by referring to "means closely drawn."

[3]The escrow arrangement in this case is not an evil and the individuals' choice of a *means* of contributing (within the thousand dollar limitations) are of no interest to the state. See Article I, Section 1, Constitution of Florida.

The police power analysis of the opinion obstructs the Court's view of the nature of this case. Basic freedom of speech, political conduct and association, the rights protected in the Florida and United States Constitutions are involved and the Court's opinion treats the subject with no more sensitivity than a question of whether an abstract power exists to adopt traffic ordinances.

III.

THE OPINION IS FACTUALLY MISLEADING

The opinion touches on a subject which has been a matter of considerable public interest and the opinion will undoubtedly be read by many people who are interested in the election laws and in the subject of judicial elections. (See appendix for the many articles and editorials on this system.) It is important that the opinion is accurate. This opinion is not in the following material respects:

1. On page 3, the opinion refers to the Attorney-General's opinion to Judge Nathan. The opinion does not reflect the fact that Judge Nathan *accepted the full distribution* (over $1,000) of escrow funds and reported the individual contributors' names.

2. On page 3, the opinion indicates that Judge Sepe received a communication on the maximum contribution. The opinion does not reflect that Judge Sepe *accepted the full distribution* (over $1,000) of escrow funds, reporting the individual contributors' names. All

this was in accordance with the escrow technique stipulated by the State.

3. The opinion does not reflect the fact that reports of all these activities were filed with the Secretary of State for all candidates, including Judges Nathan and Sepe, and that the State did not object to the procedure until the Elections Commission took its action in 1976.

IV.

THE COURT HAS INTRODUCED CONSIDERABLE CONFUSION INTO THE ELECTION LAW

On Page 10 of the opinion, the Court appears to deal with the question of the "escrow" arrangement without giving that arrangement the analysis that the stipulated facts merit. The opinion states:

> Appellants' contention is that this arrangement is the same as if an individual gathered contributions from other individuals and delivered them in the same form to a candidate. *This is not the case, however, since the contributions from the individuals are commingled by the trustee and since the terms and conditions . . . transpose the Trust Fund . . .* to a political committee which may not contribute in excess of $1,000.
>
> (Emphasis added)

The Court fails to understand that the contribution is made and reported as the contribution of individuals. These individuals do not seek to corrupt the electoral process. They do not even attempt to contribute as much as the law allows, one thousand dollars. They merely attempt to contribute in a method which suits their personal wishes.

This simple escrow arrangement has been rendered evil by the statement that (1) funds are commingled and (2) that others are agreeing to contribute (less than a thousand dollars) to the same candidates. The Court does not explain why this makes any difference.

Under the Court's opinion there is doubt whether a person could instruct his law partner to draw from his partnership bank account (commingled funds) checks for all judicial candidates who are found to be qualified on condition that the partner also make such a contribution.

Simply stated, "commingling" has nothing to do with this case nor has the individual's decision to contribute only to those found qualified, so long as those individual contributions remain below the one thousand dollar level. The Court's attempt to provide a rationale to this application of the law is harmful to the law, confusing to citizens and deprives them of their rights of association.

V.

THE FINDING OF MOOTNESS CREATES A SITUATION WHERE CONSTITUTIONAL PRINCIPLES CANNOT BE VINDICATED

The final point in the opinion, pages 10 and 11, deal with the appellant's claim that the Elections Commission is unconstitutional by reason of its appointive process which is a limitation on the Governor's power, in violation of the separation of powers. *Westlake v. Merritt*, 85 Fla. 28, 95 So. 662 (1923) is directly on point but the Court does not address the merits of this point finding, instead, that the question is moot.

The holding of mootness places appellant and similarly situated parties in an extraordinary position. It means there is no time that this important constitutional issue can be raised without the risk of violating a criminal statute. This argument, not previously considered by the Court, is based on the provisions of Florida Statute 106.25(4) which states, in part:

> Any person who discloses any testimony, finding or other transactions of the commission occurring in closed session . . . shall be guilty of a misdemeanor . . .

Therefore, the decision of this Court leaves a Catch-22 situation where a party aggrieved with the Elections Commission's process may not challenge it during the Elections Commission's deliberations under penalty of a criminal statute and may not thereafter challenge it because to do so would be to raise a moot question.

Surely, the Court did not intend to apply the doctrine of mootness in such a situation.

CONCLUSION

The Court is respectfully urged to grant the motion for rehearing. The Court is first urged to reverse its stand and find the statute unconstitutional under principles of free speech, free association and equal protection. In the alternative, the Court is requested to reopen briefing and argument in this case. At a minimum, the Court is requested to reconstruct the opinion to eliminate statements which are factually misleading and prejudicial to the appellant's opportunities for further review.

/s/ Talbot D'Alemberte
TALBOT D'ALEMBERTE
1400 Southeast First National
Bank of Miami
Miami, Florida 33131
305-577-2816

Copies of this pleading have been served on all counsel of record in this cause, this 5th day of January, 1978.

/s/ Talbot D'Alemberte

IN THE SUPREME COURT OF FLORIDA
TUESDAY, FEBRUARY 28, 1978

CASE NO. 51,765
Circuit Court Case No. 77-670

GERALD F. RICHMAN,
Appellant,

vs.

ROBERT L. SHEVIN, ETC., ET AL.,
Appellees.

On consideration of the petition for rehearing filed by attorney for appellant, and replies thereto,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

A True Copy

TEST:

Sid J. White
Clerk Supreme Court

By: /s/ DEBBIE CAUSSEAUX
Deputy Clerk

cc: Hon. Paul F. Hartsfield, Clerk
Hon. Donald O. Hartwell, Judge

Talbot D'Alemberte, Esquire
Richard A. Hixson, Esquire
Stephen Marc Slepin, Esquire
of Slepin & Schwartz

IN THE CIRCUIT COURT
FOR THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 77-670 (HARTWELL)

GERALD F. RICHMAN,

Plaintiff,

v.

ROBERT L. SHEVIN, Attorney General of the State of Florida, RICHARD E. GERSTEIN, State Attorney for the Eleventh Judicial Circuit and the ELECTIONS COMMISSION of the State of Florida,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

The plaintiff sues the defendants and states:

1. *Jurisdiction.* This case is brought for declaratory judgment and injunctive relief under the provisions of Article V, Section 5, Florida Constitution, as implemented by Chapter 86, Florida Statutes, Section 26.012, Florida Statutes and Florida Rule of Civil Procedure 1.610.

2. *Venue.* This action deals with two defendants who are located in Leon County. Section 47.011, Florida Statutes, governs venue and venue lies in Leon County, Florida.

3. *Plaintiff.* The plaintiff is GERALD F. RICHMAN, a resident of Dade County and an attorney in Miami, Florida, admitted to the practice of law by the Supreme Court of Florida. He is the President of the Dade County Bar Association, a voluntary association of lawyers. He was formerly the Co-Chairman of the Dade Judicial Trust Fund and has been a contributor to that fund since it has been established.

4. *Defendants.*

a. *Robert L. Shevin* is the Attorney General of the State of Florida charged with duties under the Florida Constitution and the election laws, Chapter 106, Florida Statutes.

b. *Richard E. Gerstein* is the State Attorney for the Eleventh Judicial Circuit in and for Dade County, Florida and is charged with duties under the Florida Constitution and the election laws, Chapter 106, Florida Statutes.

c. The *Florida Elections Commission* is created by Chapter 106, Florida Statutes and has been vested with certain duties by Chapter 106.

5. *Establishment of the Judicial Trust Fund.*

a. The Dade Judicial Trust Fund was created in 1972 following the recommendations of a Committee appointed by the President of the Dade County Bar Association. The Chairman of the Committee was a member of the Board of Governors of The Florida Bar, and a past president of The Florida Bar served on the Committee, as did the plaintiff herein. Extensive public

hearings and debate preceded the Committee recommendations.

b. The Judicial Trust Fund was established to eliminate any appearance of impropriety in election finance dealings between lawyers and judicial candidates. The purposes of the Judicial Trust Fund were to meet the ethical responsibility of a lawyer as set forth in Ethical Consideration 8-6 to ". . . aid in the selection of only those [persons seeking judicial office] who are qualified," eliminating the direct financial relationship between attorneys and judicial candidates, preventing solicitation of lawyers by judges or judicial candidates, and providing the public with the results of the bar-conducted judicial poll and other information on judicial candidates.

c. As shown in the attached "Trust Agreement," Exhibit 1, which is incorporated by reference, the Fund consists of five trustees, four appointed by the Dade Judicial Trust Fund Committee which, in turn, is appointed by the President of the Dade County Bar Association. One trustee is the presiding judge of the Circuit Court of the Eleventh Judicial circuit, or his designee, and only one of the other four trustees may be a member of the Bar.

d. The trustees as set forth in the attached Exhibit 1 act as escrow agents assigned the task of administering the Judicial Trust Fund in accordance with its terms. The trustees are all outstanding members of the community, serving without compensation as a public service. Monies received by Fund contributors are disbursed to candidates, not by discretion, but in accordance with the terms of the trust instrument. Thus,

the distribution of funds to candidates is based upon the judicial poll conducted by the Dade County Bar Association among all lawyers in Dade County, whether or not the lawyers are members of the Dade County Bar Association and without regard to participation in the Judicial Trust Fund. The trustees do not exercise discretion in the distribution of funds to candidates.

e. Each contributor to the Judicial Trust Fund voluntarily signs a pledge in which he agrees not to contribute any money, directly or indirectly, to any candidate for judicial elections in any way other than through his participation in the Fund, although each contributor reserves his right to vote for the candidate of his choice and to support any candidate by donations of time or service. No lawyer has contributed over one thousand dollars to the Judicial Trust Fund at any time nor have the aggregate contributions of any lawyer, through the Trust Fund, been greater than this amount to date. Thus, as shown in the exhibits, participants in the Fund have never contributed money through the Fund to any candidate which is at all close to the maximum permitted to individuals by law, Section 106.08, Florida Statutes. Further, the Judicial Trust Fund is operated to prevent any such excess contributions, since no lawyer will be permitted to contribute more than one hundred fifty dollars per year to the Fund. Since the money from the Judicial Trust Fund has been distributed to all candidates who are found qualified and who participate in the Fund, there has been and cannot be any avoidance of the individual campaign contribution limitations set up by Section 106.08, Florida Statutes.

f. To be eligible for contributions through the Trust Fund concept, each candidate must sign a pledge in which he agrees:

> "1. I shall not directly or indirectly solicit campaign contributions from any members of The Florida Bar.
>
> 2. I shall not accept any campaign funds from any members of The Florida Bar.
>
> 3. I shall apply all monies received from the Judicial Trust Fund only toward campaign expenditures, including filing fees."

Composite Exhibit 2, attached hereto and made a part hereof, contains the materials sent to the judicial candidates by the Judicial Trust Fund. This Exhibit includes a copy of the pledge and copies of materials routinely sent to all judicial candidates.

g. The trustees have published biographical sketches of all candidates that meet the requirements of an approved form, providing there are sufficient total contributions available to make this feasible. The publication of biographies is done to increase public interest and does not carry any endorsement by the Dade County Bar Association or its officers nor by the Judicial Trust Fund. This is done as an independent project, not under the direction or control of any candidate.

h. In its first year of operation, 1972, approximately 300 lawyers contributed funds that permitted distributions of $26,764.81 to 22 judicial candidates.

i. The Fund has operated continuously since 1972, affording participants the opportunity to make contributions to candidates in the 1974 and 1976 elections with full reporting and disclosure both to the Secretary of State, the candidates, and the press and news media as more fully set forth hereafter.

6. *Attorney General's Opinion.* In 1972, the Honorable Raymond Nathan, then a Circuit Judge in Dade County, Florida, sought an opinion from the Attorney General, the defendant, ROBERT L. SHEVIN, on the legality of the Judicial Trust Fund. A true copy of the Opinion, dated September 8, 1972, is attached hereto as Exhibit 3 and made a part hereof by reference. The Opinion states in part:

> In conclusion, the Dade County Bar Association Trust Fund could contribute $1,000 to each judicial candidate. The Trust Fund in this situation would be a "group" or "organization" within the purview of Subsection (9) of Section 99.161, Florida Statutes, and the campaign treasurer of each candidate would list the Trust Fund as the contributor, without listing each separate lawyer as a contributor. As noted above, such organizations are required to "make a full and complete report" of all contributions received from members of the organization, including their names and addresses and the amounts contributed by each. In addition, the Trust Fund must file the reports required by this section. While the reports are required by the statute to be filed only with the circuit court clerk, if all members of the group or organization reside within the

county, it is suggested that copies thereof be filed also with the Department of State, as the offices in question are required to qualify with that department.

If it is desired to contribute more than $1,000 to each candidate, each attorney participating in the Trust Fund should make an individual personal contribution to each judicial candidate of whatever amount his portion of the $1,400 would be when divided up among the participating attorneys. In this situation, each contributing attorney would be listed by the campaign treasurer as a contributor, with the amount of his contribution.

7. *Additional Notification to the Attorney General and Elections Officials.* The question of propriety of contributions over one thousand dollars was raised again in 1974 in correspondence between The Honorable Alfonso C. Sepe, Circuit Judge, the Dade County Bar Association and various government officials, including defendant, SHEVIN, and the office of the Secretary of State. True copies of this correspondence are attached as Composite Exhibit 4 and made a part hereof. Following this exchange Judge Sepe did accept the contribution in excess of one thousand dollars through the Judicial Trust Fund and informed the Secretary of State. To the best of his knowledge, neither the plaintiff nor anyone charged with the administration of the Judicial Trust Fund received a copy of the Secretary of State's letter dated October 16, 1974 and the plaintiff first learned of this correspondence in 1977.

8. *Reports Filed With Authorities and Public.*

a. *Reports Filed With Public Officials.* The Judicial Trust Fund has regularly filed reports of its activities with various public officials for the purposes of public disclosure. Attached hereto and made a part hereof by reference is Composite Exhibit 5, (reports filed in 1972), Composite Exhibit 6 (reports filed in 1974) and Composite Exhibit 7 (reports filed in 1976). Reports filed by the Judicial Trust Fund have disclosed all amounts distributed by the fund to candidates. Additionally. the Judicial Trust Fund has sent to all judicial candidates a listing showing, by name and address, all contributors to the fund and a listing of the *pro rata* contribution by each fund participant. Composite Exhibit 4 contains an example of such a list used by Judge Sepe in filing with the Secretary of State. On information and belief the plaintiff alleges that all judicial candidates receiving money through the Judicial Trust Fund have filed the reports as a part of their campaign reports.

b. *Doubt Expressed Concerning Reports.* On August 6, 1975, the plaintiff sent a letter to the Department of State expressing doubts about the propriety of the forms filed. This letter, attached hereto as Exhibit 8 and made a part hereof by reference, was never answered.

c. *Publicity About Judicial Trust Fund Has Been Widespread.* Additionally, wide publicity was given to the activities of the Judicial Trust Fund. Composite Exhibit 9, attached hereto and made a part hereof by reference, contains true copies of articles and other publications relating to the Dade Judicial Trust Fund

published to a wide audience of the public and the legal profession. The defendants GERSTEIN and SHEVIN have been on the mailing list of the Dade County Bar Association and The Florida Bar since the inception of the Judicial Trust Fund and at all times relevant to the organization and operation of the fund. They have received copies of the publications of those organizations which appear in Composite Exhibit 9.

9. *Defendants Had Knowledge Of The Existence Of The Fund.* Due to the wide publicity given to the Judicial Trust Fund, the defendants, SHEVIN and GERSTEIN and members of their staffs had actual or constructive knowledge of the Judicial Trust Fund and the method of its operation. One of more members of the Elections Commission also had knowledge of the Dade Judicial Trust Fund and the method of its operation. None of the defendants has informed the Judicial Trust Fund, the Dade County Bar Association or the plaintiff of any determination of illegality in the operation of the Judicial Trust Fund at any time prior to the investigation referred to in paragraph 10, below.

10. *Investigation.* On information and belief, the plaintiff alleges that some complaint was made to the Florida Elections Commission by an accusor who has never been identified by the Florida Elections Commission. At the request of the Elections Commission, the plaintiff voluntarily appeared before the Commission in person and through counsel, responding to all questions and producing all documents requested. The plaintiff hereby demands that copies of a full record and transcript of all proceedings be furnished to him or made available at a convenient place for inspection and

copying, pursuant to the Florida Public Records Act, Chapter 119, Florida Statutes.

11. *Gag Rule Imposed.* Prior to and during the hearings, the plaintiff was informed by Election Commission staff and members that he could not comment on any proceedings pending under the provisions of Section 106.25(4), Florida Statutes. Despite the existence of this statute, the plaintiff has been contacted by reporters at each stage of the proceedings under circumstances which made it clear that other persons, with knowledge of the investigation, were contacting the press. The plaintiff has been hampered in his attempts to explain his position and that of the Dade County Bar Association to the press and the public and has found that his right to petition his elected legislative representatives for relief has been severely impaired by the statute. Since further dealings with the Elections Commission are likely, the plaintiff respectfully seeks to exercise his right to free speech guaranteed by the First Amendment to the United States Constitution and Article I, Section 4 of the Florida Constitution in all proceedings, past and future, with the Florida Elections Commission but stands in jeopardy of prosecution if he does so.

12. *Certification By Commission.* At the conclusion of the proceedings by the Florida Elections Commission, the Commission issued a "Notice of Determination," a copy of which is attached hereto as Exhibit 10 and made a part hereof by reference.

13. *Judicial Trust Fund Has Continuing Operation.* The Judicial Trust Fund has a continuing operation which is essential to its purpose. The Dade County

Bar Association intends to conduct the 1977 fund raising campaign for the Judicial Trust Fund in the immediate future and, indeed, has delayed that effort because of a desire to cooperate with state officials. The Judicial Trust Fund has funds on hand which it is obligated to distribute in accordance with the agreement. Further, the Dade County Bar Association, of which the plaintiff is President, has an obligation to indemnify the Trustees for any reasonable legal expenses incurred in the performance of their duties and is thereby exposed to potential liability in excess of current resources. If the Trustees are subjected to legal action, the plaintiff must take action to raise funds for expenses in accordance with the undertaking of the Dade County Bar Association.

14. *Doubt.* Because of the investigation by the Florida Elections Commission and the Notice of Determination, the plaintiff is in doubt about the appropriate action to be taken by the Judicial Trust Fund in relation to the contributions to the Fund and is in doubt about the obligation to the Trustees. The continuing operation of the Judicial Trust Fund places the plaintiff under continuing threat of investigation and legal action, with the consequent loss of his rights of free speech. He is in doubt about the deference he should accord these infringements on his free speech.

15. *Exhaustion Of Administrative Remedies.* The plaintiff has exhausted all necessary administrative remedies.

16. *Irreparable Harm Threatened.* Unless prompt judicial relief is granted, the Judicial Trust Fund and the Dade County Bar Association's efforts to establish an operable fund will be irreparably harmed

and the plaintiff's rights of association and free speech will be denied. There are imminent threats to the plaintiff's exercise of his rights of free speech. There is no adequate remedy at law.

17. *Questions Presented For Declaratory Relief.* The following questions are presented for the Court's resolution:

a. Whether there is any compelling state interest which can justify the application of the restrictions on contributions to prevent the Judicial Trust Fund from distributing more than one thousand dollars to any candidate where the operation of the fund insures against corrupt activity?

b. Whether the Judicial Trust Fund functions as a "political committee," under Sections 106.011(2) and 106.08, Florida Statutes?

c. If the Judicial Trust Fund is found to be a "political committee," whether the restrictions of Section 106.08 are constitutional as applied to the Judicial Trust Fund?

d. If the Judicial Trust Fund is found to be a political committee under the terms of Chapter 106, whether the provisions of Chapter 106 are unconstitutionally overbroad, thereby infringing the First Amendment of the United States Constitution?

e. If the Judicial Trust Fund is found to be a "political committee," whether the

classifications of Chapter 106 are constitutional under the equal protection provisions of the Florida Constitution and the United States Constitution since certain associations of citizens (political parties, for instance) are permitted unlimited contributions and other associations, such as the Judicial Trust Fund, are limited in contributions?

f. Whether the Judicial Trust Fund operated in accordance with the September 8, 1972 Opinion of the Attorney General to The Honorable Raymond Nathan?

g. Whether the Opinion of the Attorney General constituted a "warning" to the Fund as suggested in the Notice of Determination of the Elections Commission?

h. Whether the disclosures of all contributors and of all distributions made by the Judicial Trust Fund demonstrated good faith compliance with all constitutional elements of the Florida Election Law?

i. Whether the Florida Election Law prohibits independent expenditures such as the publication of bar poll results and the biographies of the judicial candidates?

j. If independent expenditures are prohibited, whether the prohibitions are unconstitutional as abridgements of the plaintiff's rights of free speech and association?

k. Whether the state is estopped from taking legal action against the persons named in the certificate by reason of the public disclosures in the 1972, 1974, and 1976 elections and the actual and imputed knowledge of responsible public officials for a period in excess of four years?

1. Whether the different treatment of associations of citizens under Chapter 106 is a reasonable classification under the Florida Constitution and the United States Constitution where political parties are forbidden from participation in judicial elections?

m. Whether the barrier imposed on plaintiff's free speech during the pendency of Elections Commission proceedings is constitutional under the First and Fourteenth Amendments of the United States Constitution and Article I, Section 4 of the Florida Constitution?

n. Whether the Notice of Determination of the Elections Commission was reasonable under the facts presented to it?

o. Whether the Elections Commission's action is a nullity due to the improper composition of the Commission since the appointments may be made by the Governor only from a list of names submitted by others, thus infringing on the Governor's

executive power under Article IV, Sections 1 and 6, Florida Constitution?

p. Whether there is probable cause to believe the Judicial Trust Fund operation has violated any of the provisions of Chapter 106?

q. Whether the Judicial Trust Fund may continue in operation as it has in the past, and, if not, what changes in its operation are necessary?

THEREFORE, the plaintiff requests this Court to take jurisdiction of this cause, resolve the questions presented and enter appropriate orders granting temporary and permanent injunctive relief, taxing costs against the defendants and enter such other orders as may be appropriate.

STEEL HECTOR & DAVIS
1400 Southeast First National
Bank Building
Miami, Florida 33131
Telephone: (305) 577-2816

By: /s/ TALBOT D'ALEMBERTE
Talbot D'Alemberte
Attorneys for Plaintiff

Filed:
March 22, 1977

IN THE CIRCUIT COURT
FOR THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 77-670

GERALD F. RICHMAN,
Plaintiff,

v.

ROBERT L. SHEVIN, Attorney General of the State of Florida, RICHARD E. GERSTEIN, State Attorney for the Eleventh Judicial Circuit and the ELECTIONS COMMISSION of the State of Florida,
Defendants.

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

AFFIDAVIT OF JOHNNIE M. RIDGELY

AFFIANT being first duly sworn, deposes and says:

1. I am JOHNNIE M. RIDGELY and I am the Executive Secretary of the Dade County Bar Association, a job I have held since 1965. Of the approximately 4,600 Florida lawyers in Dade County, approximately 2,300 are members of the Dade County Bar Association.

2 In connection with my duties, I am familiar with the operation of the Dade County Judicial Trust

Fund and I have personally undertaken various duties connected with the administration of that Fund. I have read the complaint filed in this case and I believe it to be true.

3. From my personal knowledge I know that efforts have been made to enforce the terms of the Judicial Trust Fund. For instance, those connected with the Fund have diligently sought to check the possibility that some persons might violate the terms of the agreement through inadvertence or otherwise and contribute both through the Fund and directly to the judges. As a result of this effort, some discrepancies were found and money was returned from the Fund to lawyers who contributed directly to judicial candidates. Attached hereto as Composite Exhibit 11 are true copies of letters which were sent to refund money to lawyers. Also included in that Exhibit are letters from laywers contesting the return of money. In each case, the money was refunded despite the objection of the lawyers.

4. On one occasion, a judicial candidate attempted to have lawyers freed from their pledges on the occasion of a special election and the policy was maintained despite this plea. Attached as Exhibit 12 is a true copy of the official minutes of the meeting of the Board of Directors of the Dade County Bar Association held September 12, 1974 reflecting this action.

5. In 1974 and 1976, some question arose concerning the application of the pledge to bar the purchase of tickets to receptions or dinners. On those occasions, the chairmen of the Dade Judicial Trust Fund, sent letters to all contributors advising them that this would be improper if the costs of the tickets were greater than the ac-

tual cost of the event. True copies of those letters are attached hereto as composite Exhibit 13.

6. I also know from my personal knowledge that the Fund has provided to candidates receiving one thousand dollars or more. reports of individual names and amounts for each person who has contributed. These reports have been sent to the candidates for filing with their campaign reports and, so far as I have knowledge, there has never been a failure of judicial candidates to file such reports. True copies of the form of letters used to forward such reports are attached hereto as Exhibit 14. True copies of the reports sent to the candidates for filing are attached hereto as composite Exhibit 15.

7. I have custody and control of the records of the Fund which I keep in the regular course of business. I have examined those records and have determined that at no time has any person contributed more than one thousand dollars through the Judicial Trust Fund since it has been established even if all contributions for the 1972, 1974 and 1976 elections are aggregated. These records are before the Court as composite exhibits 5, 6 and 7 attached to the complaint heretofore filed in this cause.

8. I have received instructions to insure that no one is permitted to contribute more than one hundred fifty dollars per year through the Fund at any time in the future.

9. I have checked the records of the Fund and find that the greatest amount of money ever contributed by any one lawyer through the Judicial Trust Fund to any judicial candidate was $69.54. The actual amounts and

names are revealed in composite Exhibit 15 attached hereto.

10. I have custody and control of the press clippings and other publicity relating to the Judicial Trust Fund and I know from personal knowledge that composite Exhibit 9, attached to the complaint, contains true copies of such material. I also know from personal knowledge that both ROBERT L. SHEVIN and RICHARD E. GERSTEIN, defendants in this cause, are on the mailing list of the Dade County Bar Association and have regularly received mailings of the newsletter and other general mailings to the membership for the years 1972 to date.

11. In connection with my duties, I am familiar with the Dade County Judicial Poll which has been in existence since before 1960. The poll has been run regularly since 1960 including polls in 1960, 1966, 1967, 1968, 1970, 1971, 1972, 1973, 1974, 1975 and 1976. In 1972, 1974 and 1976, the poll ballot was sent to all Florida lawyers in Dade County as reflected in The Florida Bar records. This was 4,601 persons in 1976.

/s/Johnnie M. Ridgely
JOHNNIE M. RIDGELY

SWORN TO AND SUBSCRIBED
before me, this 29th day of
March, 1977, at Miami, County
of Dade, Florida.

/s/ Betty M. O'Connor
Notary Public, State of Florida at Large

IN THE CIRCUIT COURT
FOR THE SECOND JUDICIAL COURT
IN AND FOR LEON COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 77-670

GERALD F. RICHMAN,
Plaintiff,

v.

ROBERT L. SHEVIN, Attorney General of the State of Floridda, RICHARD E. GERSTEIN, State Attorney for the Eleventh Judicial Circuit and the ELECTIONS COMMISSION of the State of Florida,
Defendants.

STIPULATION OF FACTS

Solely for the purpose of this litigation, and for no other purpose, the parties to this matter appear by and through counsel and stipulate:

1. *Venue.* This action deals with two defendants who are located in Leon County. Section 47.011, Florida Statutes, governs venue and venue lies in Leon County, Florida.

2. *Plaintiff.* The plaintiff is GERALD F. RICHMAN, a resident of Dade County and an attorney in Miami, Florida, admitted to the practice of law by the Supreme Court of Florida. He is the President of the Dade County Bar Association, a voluntary association of

lawyers. He was formerly the Co-Chairman of the Dade Judicial Trust Fund and has been a contributor to that fund since it has been established.

3. *Robert L. Shevin* is the Attorney General of the State of Florida. The Department of Legal Affairs, of which he is the head, is charged with duties specifically set out in Chapter 106, Florida Statutes (Campaign Financing).

4. *Richard E. Gerstein* is the State Attorney for the Eleventh Judicial Circuit in and for Dade County, Florida and is charged with specific duties set out in Chapter 106, Florida Statutes (Campaign Financing).

5. The *Florida Elections Commission* is created by Chapter 106, Florida Statutes, and has been vested with certain specific duties set out in said Chapter 106.

6. The Dade Judicial Trust Fund was created in 1972 following the recommendations of a Committee appointed by the President of the Dade County Bar Association. The Chairman of the Committee was a member of the Board of Governors of The Florida Bar, and a Past president of the Florida Bar served on the Committee, as did the plaintiff herein.

7. Defendants stipulate that the purposes of the Trust Fund are as set out in paragraph 4 of the Trust Agreement (Exhibit A attached hereto).

8. The Trust Agreement (Exhibit A) provides in paragraph 2 of said agreement that "The trust shall be administered by five trustees, all of whom shall be appointed by the DADE JUDICIAL TRUST FUND COM-

MITTEE provided, however, that one trustee shall be the Presiding Judge of the Circuit Court of the Eleventh Judicial Circuit or his designee, and only one of the other four trustees may be a member of this Bar."

9. The five trustees of the Trust Fund act as escrow agents pursuant to the terms of the Trust Agreement. Defendants have no knowledge of the allegations of paragraph 5(d) as to the compensation received by the trustees of the Dade Judicial Trust Fund. Defendants do not contest that the method for distribution of funds to candidates set forth in the Trust Agreement is based upon the poll conducted by the Dade County Bar Association, but Defendants are without knowledge of the existence of discretion exercised by the trustees.

10. The Trust Agreement provides that each contributor signs a pledge. The operators of the Dade Judicial Trust Fund have expressed an intent to limit the amount of contributions by lawyers to the Trust Fund, and if such intent were realized, no lawyers subscribing to the Trust Agreement ought to thereunder contribute to the Trust Fund more than the operators of the Fund allow.

11. Under the terms of paragraph 8 of the Trust Agreement, to be eligible for contributions through the Trust Fund concept, each candidate must sign a pledge in which he agrees:

> "1. I shall not directly or indirectly solicit campaign contributions from any members of The Florida Bar.

2. I shall not accept any campaign funds from any members of the Florida Bar.

3. I shall apply all monies received from the Judicial Trust Fund only toward campaign expenditures, including filing fees."

12. The Dade Judicial Trust Fund has filed Campaign Treasurer Reports with the Secretary of State of Florida.

13. In 1972 a letter was sent from the Attorney General to the Honorable Raymond Nathan expressing an opinion as to the distribution of the funds collected by the Dade Judicial Trust Fund. That opinion is attached hereto as Exhibit B and speaks for itself.

14. The question of propriety of contributions over one thousand dollars was raised again in 1974 in correspondence between The Honorable Alfonso C. Sepe, Circuit Judge, the Dade County Bar Association and various government officials, including defendant, SHEVIN, and the office of the Secretary of State. True copies of this correspondence are attached as *Composite Exhibit 4* to the Complaint. Following this exchange Judge Sepe did accept the contribution in excess of one thousand dollars through the Judicial Trust Fund and informed the Secretary of State.

15. The Dade Judicial Trust Fund has filed Campaign Treasurer Reports with the Secretary of State which reports speak for themselves. (See Exhibits 5, 6 and 7 to the Complaint.)

16. On August 6, 1975, the plaintiff sent a letter to the Department of State, which letter speaks for itself. See Exhibit 8 attached to the Complaint in this matter.

17. Plaintiff voluntarily appeared before the Florida Elections Commission.

18. Section 106.25(4) and (5), Florida Statutes, prohibited Plaintiff from discussing any Elections Commission proceedings until Notice of Determination and all witnesses before the Florida Elections Commission are subject to confidentiality provisions of Section 106.25(4) and (5), Florida Statutes, until Notice of Determination is filed.

19. At the conclusion of the proceedings by the Florida Elections Commission, the Commission issued a "Notice of Determination," a copy of which is attached to the Complaint as Exhibit 10.

20. The plaintiff has exhausted all necessary administrative remedies.

Respectfully submitted,

ROBERT L. SHEVIN
ATTORNEY GENERAL

Dated this 30th day
of March, 1977.

/s/ Sydney H. McKenzie, III
SYDNEY H. McKENZIE, III
Chief Trial Counsel

Dated this 30 day
of March, 1977.

/s/ Richard A. Hixson
RICHARD A. HIXSON
Assistant Attorney General

Attorneys for Defendants Robert L. Shevin and Richard Gerstein

Department of Legal Affairs
Civil Division
725 South Calhoun Street
Tallahassee, Florida 32304
904/488-1573

Dated this 31 day
of March, 1977.

/s/ Stephen Marc Siepin
STEPHEN MARC SIEPIN

Attorney for Defendant Elections Commission, State of Florida

Suite 201 Ellis Building
1311 Executive Center Drive
Tallahassee, Florida 32301
904/878-4161

IN THE CIRCUIT COURT
OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

CASE NO. 77-670

GERALD F. RICHMAN,
Plaintiff,

vs.

ROBERT L. SHEVIN, Attorney General of the State of Florida, RICHARD E. GERSTEIN, State Attorney for the Eleventh Judicial Circuit and the ELECTIONS COMMISSION of the State of Florida,
Defendants.

ORDER

It is clear to many that the rather special relationship between a lawyer and a judge gives rise to unusual problems when a judicial candidate seeks campaign funds.

The Dade County Bar, motivated by the most laudable and admirable of considerations, sought a solution to this old and complex problem.

In an endeavor to solve the unusual problem generated by lawyers contributing (or failing to contribute) to the campaigns of those seeking judicial office, the Dade County Bar Association devised a most unique and innovative solution; the Dade County Judicial Trust Fund.

This creature has given rise to the litigation now before this Court.

The essential issues posed are whether the "trust fund" is comprehended within the definition of "political committee" as delineated by Section 106.011, Florida Statutes, and if so included, is such section unconstitutional for overbroadness.

A question as to the legitimacy of the Elections Commission of the State of Florida is also tendered. However, it is the opinion of this Court that such issue is moot, and we in consequence decline to address ourselves to that question.

While it is obviously true that lawyers occupy an unusual position with respect to judges, this Court is of the opinion that this relationship cannot thereby be classified as unique or singular.

The Legislature has the undoubted authority to regulate within reasonable bounds the conduct of state elections, including the regulation of campaign contributions. Buckley (*Buckley vs. Valeo*, 424 US 1, 46 L.Ed. 2d 659) essentially articulated two reasons for the propriety in limiting the amount of financial contributions by individuals to potential office-holders: 1. The tendency or possibility to create a quid pro quo relationship and, 2. The creation of an appearance of influence or corruption. It is thus obvious that the question of contributions and the amount thereof is a legitimate concern of the Legislature. The means employed by the Legislature to accomplish the public good in an area of vital concern to the Legislature should be

left to that body and Courts should not intrude unless it can be clearly established that the means employed to accomplish that good violate fundamental rights. From a full review and analysis of the question presented, we are unable to discern that the means employed or the limitations imposed in the statutes under consideration are overly broad. It is the opinion of this Court that the Dade County Judicial Trust Fund clearly falls within the definition of political committee as defined by the statute and that such inclusion does not result in overbroadness in the application of the statute.

It certainly appears to this Court that the plan devised by the Dade County Bar accomplishes the purpose for which it was designed and may, in fact, offer a more complete solution to a complex problem than the solution adopted by the Legislature. However, as alluded to previously herein, it is not for this Court to determine what is best for the people of the State of Florida but only to determine whether the Legislature, in enacting the laws under consideration, did so within the confines of legitimate authority. When considered in the light of all of the factors involved, it is our opinion that the Legislature addressed itself to a question of public interest and did so in a proper and lawful manner.

It is, therefore, the opinion of this Court that the Dade County Judicial Trust Fund is a political committee defined by Section 106.011 and is subject to the limitations on campaign contributions imposed by Section 106.08, Florida Statutes.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this 3rd day of May, A.D. 1977.

/s/DONALD O. HARTWELL
DONALD O. HARTWELL,
CIRCUIT JUDGE

Copies furnished to:

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Steel, Hector & Davis
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IN THE CIRCUIT COURT
FOR THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 77-670

GERALD F. RICHMAN,
Plaintiff,

v.

ROBERT L. SHEVIN, Attorney General of the State of Florida, RICHARD E. GERSTEIN, State Attorney for the Eleventh Judicial Circuit and the ELECTIONS COMMISSION of the State of Florida,
Defendants.

FINAL JUDGMENT

THIS CAUSE came before the Court on cross motions for summary judgment with all parties agreed on the essential facts. The Court has rendered its Opinion in the Order dated May 3, 1977 which is incorporated herein by reference. It is, therefore,

ORDERED that the plaintiff's challenge to the constitutionality of the election laws as the Election Commission would apply them to the Dade County Judicial Trust Fund is not well taken and the Court finds that the challenged statutes are constitutional as applied to the Judicial Trust Fund. Therefore, judgment should be

and the same is hereby entered for the defendants and against the plaintiff, the defendants to go hence without day. There appear tc be no taxable costs for the defendants.

DONE AND ORDERED in Chambers, at Tallahassee, Florida, this 12th day of May, 1977.

/s/ DONALD O. HARTWELL
DONALD O. HARTWELL,
CIRCUIT JUDGE

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Tallahassee, Florida 32301

IN RE: FEC-076-01
DADE COUNTY BAR ASSOCIATION AND
JUDICIAL TRUST FUND

CASE NO. FEC-076-01

Florida Elections Commission

NOTICE OF DETERMINATION

The Florida Elections Commission at its meeting on February 15, 1977, has, pursuant to Chapter 106, Florida Statutes, formally determined: that probable cause exists to believe that the Dade Judicial Trust Fund, and G. Lester Freeman, William Simmons, Daniel Gil!, James W. Kehoe, Richard W. McEwen, Trustees, and Burton Young, Chairman of the Dade Judicial Trust Fund Committee, and Gerald Richman, President, Dade County Bar Association have violated Section 106.08, F. S., by, as a political committee, having contributed to candidates in excess of the amounts prescribed by Section 106.08, F. S., notwithstanding warning by the Attorney General.

/s/ WALLACE F. KING
Wallace F. King
Chairman

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-1677

GERALD RICHMAN,

Petitioner,

vs.

ROBERT L. SHEVIN, Attorney General of the State of Florida, RICHARD E. GERSTEIN, State Attorney for the Eleventh Judicial Circuit and the ELECTIONS COMMISSION of the State of Florida,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

ROBERT L. SHEVIN
Attorney General

RICHARD A. HIXSON
Assistant Attorney General
Department of Legal Affairs
Civil Division
The Capitol
Tallahassee, Florida 32304
904/488-1573

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TABLE OF AUTHORITIES

IN THE SUPREME COURT OF THE UNITED STATES

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No. 77-1677

GERALD RICHMAN,

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vs.

ROBERT L. SHEVIN, Attorney General of the State of Florida, RICHARD E. GERSTEIN, State Attorney for the Eleventh Judicial Circuit and the ELECTIONS COMMISSION of the State of Florida,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Opinions Below

The opinion of the Florida Supreme Court is reported at 354 So.2d 1200 (Fla. 1977).

Jurisdiction

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether the Dade County Judicial Trust Fund, an organization whose express purpose is to contribute to candidates for judicial office, has the constitutional right to contribute to such candidates in excess of $1,000.

STATUTES INVOLVED

Section 106.01(2), Florida Statutes (1975), provides in pertinent part:

> 'Political committee' means a combination of two or more individuals, or a person other than an individual, the primary purpose of which is to support or oppose any candidate, issue, or political party and which accepts contributions or makes expenditures during a calendar year in an aggregate amount in excess of five hundred dollars. Organizations which are determined by the Department of State to be committees of continuous existence pursuant to s. 106.04 and political parties regulated by chapter 103

> shall not be considered political committees for the purposes of this chapter. . . .

Section 106.08(1)(a) provides:

> (1) No person or political committee shall make contributions to any candidate or political committee in this state, in moneys, material, or supplies or by way of loan, in excess of the following amounts:
>
> (a) To a candidate for countywide office or to a candidate in any election conducted on less than a countywide basis, one thousand dollars.

STATEMENT OF THE CASE

This litigation concerns the activities of the Dade County Judicial Trust Fund (Fund), an entity created by the Dade County Bar Association for the express purpose of making contributions to candidates for judicial office. The operation of the Fund is described in the opinion of the Florida Supreme Court, Richman v. Shevin, supra, 354 So. 2d at 1201-1202, but for purposes of clarity, some of the features of the operation of the Fund should be set forth.

The Dade Judicial Trust Fund was created by the Dade County Bar Association on August 21, 1972, as reflected in the Trust Agreement of the Dade County Bar Association which is appended hereto. (A. 1-10). There are five Trustees of the Fund, four of whom are appointed by the Dade Judicial Trust Fund Committee. The Trust Fund Committee is appointed by the President of the Dade County Bar Association. The remaining Trustee is the Presiding Judge of the Circuit Court of the Eleventh Judicial Circuit. Paragraph 4 of the Trust Agreement states that the purpose of the Fund is to distribute voluntary contributions from members of the Florida Bar to qualified judicial candidates as determined by a poll propounded to all members of the Bar maintaining offices in Dade County.

The Trust Agreement sets out a formula for the amount of contributions from members of the Bar ranging between $50.00 and $150.00; however, the Agreement sets forth no prohibition on amounts contributed. The Fund receives contributions from members of the Bar and distributes contributions to selected judicial candidates who choose to participate in the Fund in accordance with a pro rata formula set forth in paragraphs 10(b), (d) and (e) of the Agreement. (A.2). The Fund has contributed to Dade Judicial candidates in amounts in excess of $1,000.00.

Selection of qualified judicial candidates is based upon the results of a poll conducted by the Dade County Bar Association. The requisites for qualification under the poll are set forth in Paragraph 10 of the Trust Agreement (A. 4-5). In order to be deemed "fund qualified," an unopposed judicial candidate under Paragraph 10(a) must "receive qualified votes totaling at least 60% of the total number of qualified and unqualified votes as to their candidacy and receive not more than 85% 'don't know' votes of the total number of votes cast for their candidacy. . . ." Contributions to unopposed candidates are to be used only for the payment of the qualifying fee. Under Paragraph 10(c) "candidates for judicial office in a contested race (1) must receive at least 60% qualified votes of the total number of qualified and unqualified votes cast toward his candidacy; and (2) must receive not more than 85% 'don't know' of the total number of votes cast toward his candidacy."

The amounts contributed have been reported to the Office of the Secretary of State on political committee forms signed by the Chairman of the Dade Judicial Trust Fund committee. The reports break down the lump sum contributions and indicate the per capita contribution of each contributory member of the Dade County Bar Association to each participating poll-qualified candidate.

Paragraph 8 of the Trust Agreement provides that to be eligible to receive contributions from the Fund, each judicial candidate must sign a pledge agreeing to refrain from soliciting or

accepting campaign contributions from members of the Florida Bar, and to only apply the contributions received from the Fund toward campaign expenditures.

On February 14, 1977, the Florida Elections Commission determined that probable cause existed to believe the Fund was in violation of Section 106.08, and a Notice of Determination was issued by the Elections Commission.

In the trial court Plaintiff contended that the Fund was not a political committee within the definition of Section 106.011, Florida Statutes (1975), but if the Fund were such a committee, then Section 106.08, Florida Statutes (1975) prohibiting contributions in excess of $1,000 was unconstitutional as violative of the First and Fourteenth Amendments to the United States Constitution. The trial court found the Fund to be within the definition of "political committee," and upheld the constitutionality of the Florida Statute.

On appeal, the Florida Supreme Court affirmed the judgment of the trial court.

REASONS FOR DENYING THE WRIT

I.

THE FLORIDA SUPREME COURT PROPERLY APPLIED THE PRINCIPLES OF BUCKLEY V. VALEO, 424 U.S. 1, 96 S.CT. 612, 46 L.ED.2D 659 (1976) IN SUSTAINING THE CONSTITUTIONALITY OF SECTION 106.08,

FLORIDA STATUTES (1975).

Petitioner in this action challenged the constitutionality of Section 106.08, Florida Statutes (1975). That section provides:

> (1) No person or political committee shall make contributions to any candidate or political committee in this state, in moneys, material, or supplies or by way of loan, in excess of the following amounts:
>
> (a) To a candidate for countywide office or to a candidate in any election conducted on less than a countywide basis, one thousand dollars.

This Court has recently had occasion to consider these very issues in an exhaustive treatment of the subject in Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), where the court rejected a similar challenge to parallel federal campaign contribution limitations.

The federal statute, 18 U.S.C. §691 (d), defined "political committee" as:

> . . .any committee, club, association or other group of persons which receives contributions or makes expenditures during a calendar

> year in an aggregate amount exceeding $10,000. . . ."

The federal statute, 18 U.S.C. §691(g), defined "person" as:

> . . .an individual, partner, partnership, committee, association, corporation or any other organization or group of persons.

Pursuant to 18 U.S.C. §§608(b)(1) and 608(b)(2) "persons" were limited to $1,000 in campaign contributions and political committees" were limited to $5,000 in campaign contributions.

Against this backdrop the Court was confronted, inter alia, with a constitutional challenge to the campaign contributions limitation as an overbroad intrusion on First Amendment rights. This Court, however, found ample justification for upholding the government's interest in limiting campaign contributions:

> It is unnecessary to look beyond the Act's primary purpose--to limit the actuality and appearance of corruption resulting from large individual financial contributions--in order to find a constitutionally sufficient justification. Under a system of private financing of elections, a candidate lacking immense personal or family wealth

> must depend on financial contributions from others to provide the resources necessary to conduct a successful campaign. The increasing importance of the communications media and sophisticated mass mailing and polling operations to effective campaigning make the raising of large sums of money an ever more essential ingredient of an effective candidacy. To the extent that large contributions are given to secure political quid pro quos from current and potential office holders, the integrity of our system of representative democracy is undermined. Although the scope of such pernicious practices can never be reliably ascertained, the deeply disturbing examples surfacing after the 1972 election demonstrate that the problem is not an illusory one.
>
> Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions. In Civil Service Comm'n v. Letter Carriers, supra, the Court

found that the danger to "fair and effective government" posed by partisan political conduct on the part of federal employees charged with administering the law was a sufficiently important concern to justify broad restrictions on the employees' right of partisan political association. Here, as there, Congress could legitimately conclude that the avoidance of the appearance of improper influence "is also critical. . .if confidence in the system of representative Government is not to be eroded to a disastrous extent." Id., at 565, 37 L.Ed.2d 796, 93 S.Ct. 2880. 424 U.S. 1, 46 L.Ed.2d 692.

The United States Supreme Court in Buckley likewise rejected the claim that the interests served by campaign contribution limitations could be drawn by a less restrictive means:

> Appellants contend that the contribution limitations must be invalidated because bribery laws and narrowly drawn disclosure requirements constitute a less restrictive means of dealing with "proven and suspected quid pro quo arrangements." But laws making criminal the giving and taking of bribes

> deal with only the most blatant and specific attempts of those with money to influence governmental action. And while disclosure requirements serve the many salutary purposes discussed elsewhere in this opinion, Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed." 424 U.S. 1, 46 L.Ed.2d 693.

In this case, however, Appellant contends that the Florida Supreme Court erred in not striking down the Florida Campaign Contributions Act as overbroad when applied to the Dade Judicial Trust Fund. Appellant's rationale in support of this proposition is that the Fund was devised by private individuals to eliminate the same evil the Legislature sought to eliminate in the Florida Elections Code, Chapter 106, Florida Statutes (1975). Therefore, the reasoning goes, since the Fund serves the same function as the statute, the Legislature's proper concern vanishes.

The conclusion urged by Appellant is that once private citizens remove the legislative concern, the Legislature then has no power to regulate in that area, and if a statute does so, such statute is rendered unconstitutional.

Such a construction usurps the Legislature's function, and places valid legislative enactments at the discretion of private citizens who seek to substitute their judgments of how best to regulate matters of public concern for that of the Legislature. Regardless of the efficacy of such private remedies, it is for the Legislature, and not private citizens by their own devises, or through the court, to establish the means of such regulation. Mourning v. Family Publications Service, 411 U.S. 356, 36 L.Ed.2d 318, 334, 93 S.Ct. 1652 (1973). In Mourning, the Supreme Court concisely stated this principle.

> It is not a function of the courts to speculate as to whether the statute is unwise or whether the evils sought to be remedied could better have been regulated in some other manner. 411 U.S. at 377, 36 L.Ed.2d at 334.

The question here is whether the Legislature constitutionally has the power to enact the statute. In his dissent in Tyson & Bro. - United Theater Ticket Offices v. Banton, 273 U.S. 418, 71 L.Ed. 718, 47 S.Ct. 426, 58 A.L.R. 1236 (1927), Mr. Justice Holmes expressed this tenet

of constitutional law:

> I think the proper course is to recognize that a state legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the Constitution of the United States or of the state, and that courts should be careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular court may happen to entertain. 273 U.S. at 445-446, 71 L.Ed. at 729.

Moreover, as a matter of law, it has been held that the courts will not substitute their social and economic beliefs for the judgment of legislative bodies which are elected to pass laws. Kahn v. Shevin, 416 U.S. 351, 40 L.Ed.2d 189, 94 S.Ct. 1734 (1975).

The Petitioner does not contest the Legislature's power to regulate campaign contributions. Indeed, under Buckley v. Valeo, supra, such a proposition would be untenable. Instead, Petitioner seeks to have the court invalidate Section 106.08, Florida Statutes (1975), because the Legislature did not exempt from the statute's operation those organizations which set up their own methods to police themselves. The fact that an organization has noble intentions is irrelevant

because as indicated by the authorities cited above, the state Legislature is vested with the power to decide what methods best achieve this legitimate governmental interest. Moreover, under Florida law legislative sanction of private regulations of campaign contributions would be susceptible to violation of the constitutional principle that the Legislature may not delegate legislative functions to private persons or corporations, see generally, 6 Fla. Jur. Const. Law §150, and a preferred classification or exemption for lawyers or any other special interest group would raise wide-ranging equal protection questions. See, e.g., Seaboard Air Line Railway v. Simon, 47 So. 1001, 56 Fla. 545; Rainey v. Nelson, 257 So.2d 538 (Fla. 1972).

In this case, however, the state has a legitimate interest in the regulation of campaign contributions. Under Section 106.08, Florida Statute, the Plaintiff may individually support with monetary contributions any judicial candidate he chooses within the limits of Section 106.08. He likewise may join with others and collectively support with contributions a judicial candidate within those limits. The Legislature has determined, however, that collectively, individuals should have only a certain amount of political clout as far as monetary contributions are concerned. Plaintiff can associate with other groups or individuals in support of judicial candidates. He can voice his support in the manner he chooses, except to the extent that the Legislature has determined that monetary

support should be limited. The state's concern with the actuality and appearance of corruption in the political process authorized the Legislature to decide that persons individually, or collectively, should not wield uncontrolled political clout simply by reason of their monetary resources. The Legislature has decided on the means to regulate this legitimate interest. The fact that this regulation applies equally to the potentially good persons, as well as the potentially corrupt persons, does not therefore render the statute unconstitutional. Petitioner seems to suggest that it is incumbent on the Legislature to show that all persons subject to the regulation are potentially corrupt. This is not the law. This Court in Buckley v. Valeo specifically upheld such regulations as within permissible constitutional limits, and rejected the contention that across-the-board limitations on campaign contributions were overly broad or impermissibly infringed on First Amendment rights.

Both the trial and appellate courts in this case had the benefit of this Court's decision in Buckley v. Valeo, supra, and both courts found that the Dade Judicial Trust Fund could be constitutionally required to abide by the Florida campaign contribution law under the principles set forth in Buckley. The fact that the Fund was not devised for corrupt purposes in no way diminishes the Florida Legislature's power to regulate the amount of financial political clout which this group of individuals in their collective capacity

may wield. This is precisely what the Florida Supreme Court held in this case:

> Appellant argues that the fund was organized to eliminate the evil and corruption contemplated by the Legislature and, therefore, since the fund serves the same purpose as the statute, the Legislature cannot regulate in that area. In effect, this argument contends for a usurpation of the legislative function by private individuals who determine in their own judgment how best to regulate matters of public concern. The Legislature, not private individuals, determines what reasonable regulations should be enacted to avoid evil and corruption in the election process. This court likewise does not legislate by determining the wisdom of legislative policy but, rather, decides whether the legislative regulation comports with the Constitution. Supra at 1205.

Here, the Florida Supreme Court has properly applied the constitutional requirements set forth in Buckley v. Valeo, supra, and there is no reason for this Court now to reconsider the Buckley decision under the circumstances of this case.

II.

THIS CASE DOES NOT PRESENT SPECIAL OR IMPORTANT REASONS FOR GRANTING A WRIT OF CERTIORARI.

Rule 19 of the Supreme Court Rules provides in part that a writ of certiorari ". . .will be granted only where there are special and important reasons therefor." Rule 19(a), S.Ct.R. then sets forth an indication of the character of the reasons considered in the disposition of petition for writ of certiorari:

> Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

As indicated above, this Court in Buckley v. Valeo, supra, exhaustively treated the constitutional issues raised in this case, and the Florida Supreme Court's decision herein is in accord with Buckley. Moreover, this case is of limited application and does not present special and important reasons of the nature required to sustain the issuance of a writ of certiorari.

As noted by the Florida Supreme Court, "[A]ppellant (Petitioner here) expressly declares he does not challenge the constitutionality of the contribution

limitation but, rather, only questions the imposition of such limitation on the Judicial Trust Fund." Richman v. Shevin, supra, 354 So.2d at 1204. Essentially, Petitioner in this case contended that the Florida statute challenged here was not meant to apply to devices like the Judicial Trust Fund, and that the Fund did not fall within the statutory definitions. Accordingly, this case primarily presents a question of state statutory construction. The circumstances of this case thus do not present questions of a wide-ranging or continuing nature, but are in fact limited to the application of a specific state statute to this one trust device as it is presently organized. Cases episodic in nature, or of such limited application are generally held insufficient to sustain the issuance of a writ of certiorari. Cf., Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70, 75 S.Ct. 614, 99 L.Ed. 897 (1955). Accordingly, this case does not meet the special and important criteria as set forth in Rule 19, Supreme Court Rules, and certiorari should therefore be denied.

CONCLUSION

For the foregoing reasons, Respondents Robert L. Shevin, Attorney General of the State of Florida, and Richard E. Gerstein, State Attorney for the Eleventh Judicial Circuit, submit that the questions upon which this cause depend are insufficient to support the issuance of a writ of certiorari. Respondents accordingly move this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General

RICHARD A. HIXSON
Assistant Attorney General

Department of Legal Affairs
Civil Division
The Capitol
Tallahassee, Florida 32304
904/488-1573

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondents' Brief in Opposition to the Petition for Writ of Certiorari to the Supreme Court of Florida was forwarded, by U.S. Mail, to TALBOT D'ALEMBERTE, ESQUIRE, Steel Hector & Davis, 1400 Southeast First National Bank Building, Miami, Florida 33131, and STEPHEN MARC SLEPIN, Slepin and Schwartz, 1311 Executive Center Drive, Tallahassee, Florida 32301, this _____ day of June, 1978.

RICHARD A. HIXSON

APPENDIX

DADE COUNTY BAR ASSOCIATION

TRUST AGREEMENT

THIS AGREEMENT, made and executed as of the 21st day of August, 1972 by and between the DADE COUNTY BAR ASSOCIATION, hereinafter called the Grantor, and G. LESTER FREEMAN, THOMAS H. ANDERSON, DANIEL K. GILL, JAMES W. KEHOE, and RICHARD W. McEWEN, hereinafter called the Trustees.

The Grantor has delivered to the Trustees the sum of One Hundred Dollars ($100.00) receipt for which is hereby acknowledged. The Grantor may from time to time pay to the Trustees funds to be added to the Trust estate to be held under the terms of this agreement.

NOW THEREFORE, the Trustees hereby agree that they will hold said funds and any additional funds that may be added to the Trust Estate in trust for the following uses and purposes, to wit:

1. The name of this trust shall be the DADE JUDICIAL TRUST FUND.

2. The trust shall be administered by five Trustees, all of whom shall be appointed by the DADE JUDICIAL TRUST FUND Committee provided however, that one Trustee shall be the Presiding Judge of the Circuit Court of the Eleventh Judicial Circuit or his designee, and only one of the other four Trustees may be a member of the Bar.

3. The Trustees shall establish and maintain a bank account into which will be deposited all funds received as set forth herein.

4. The purpose of the Trust Fund will be to receive and distribute voluntary contributions from members of The Florida Bar which funds shall then be distributed directly in accordance with the formula herein.

5. It is recommended that each attorney practicing in Dade County whether he is practicing individually or as a member of a professional association or partnership contribute the following minimum amounts to the Trust Fund, and no contribution in any lesser amount will be accepted:

Attorney admitted to practice for less than five years-----$ 50.00

Attorneys admitted to practice for more than five years but not more than ten years---------- 100.00

Attorneys admitted to practice for more than ten years---------- 150.00

6. All persons contributing to the fund shall sign a pledge which, in substance, will provide that the person so contributing shall make no other monetary contribution, either

directly or indirectly to any incumbent judge or candidate for judicial office other than the contribution made directly to the Trust Fund. Nothing herein is intended to prevant any contributor to the Trust Fund from making a contribution in terms of time or personal effort toward a particular judicial candidate. All pledges shall be irrevocable until closing of the polls for the then pending election.

7. The Trustees shall maintain at all times a current list of all contributions and contributors at the offices of the Dade County Bar Association and shall assure strict compliance with all applicable election laws. The Trustees shall further publish to the Bar and to the members of the general public in a newspaper of general circulation at least seven days prior to any primary or general election, the names of all contributors and the amounts they have contributed.

8. Only incumbent judges and judicial candidates voluntarily signing the pledge attached hereto which, in substance requires that such incumbent judge or judicial candidate (1) shall not directly or indirectly solicit campaign contributions from any member of The Florida Bar; (2) shall not accept any campaign funds from any members of The Florida Bar other than such funds as are

distributed directly under the Trust Fund; (3) shall apply all monies received from the Trust Fund only toward campaign expenditures, including filing fees, and (4) shall return to the Trust Fund any monies not so expended, may receive monies from this Trust Fund in accordance with the formula contained herein.

9. Said pledge of an incumbent judge or judicial candidate once received shall be irrevocable. Pledges of unopposed candidates or unopposed incumbents may be signed and returned to the Dade Judicial Trust Fund at any time up to three days after the day of certification of the judicial poll. All pledges of candidates in contested races, and all pledges of contributors must be signed and returned to the Dade Judicial Trust Fund not later than the last day on which ballots for the judicial poll are returnable, and all ballots shall remain sealed until the day following their final return date.

10. All contributions to the fund, other than monies expended to publish biographical sketches as set forth in paragraph 15, shall be distributed by the Trustees of the fund in accordance with the following formula not later than seven days from the date of receipt and certification of the judicial poll propounded to all members of the Bar maintaining offices in Dade County,

by the Dade County Bar Association:

a. A "Fund Qualified" candidate is defined to be a candidate who meets the requirements set forth herein for receipt of monies from the Trust Fund.

b. All unopposed candidates or unopposed incumbents who receive qualified votes totaling at least 60% of the total number of qualified and unqualified votes as to their candidacy and receive not more than 85% "don't know" votes of the total number of votes cast for their candidacy shall be entitled to share pro-rata in the distribution of funds along with all other Fund Qualified candidates up to the amount of their qualifying fees and shall apply funds thus received only to payment of the qualifying fee. Such unopposed candidates or incumbents shall specifically agree and pledge to return to any donor, whether or not such donor be a member of The Florida Bar, any funds that have been received by said unopposed candidates or incumbents to the extent that such funds exceed the amount of the qualifying fee less the amount of monies received from the Trust Fund.

c. To be eligible for contributions from the Trust Fund a candidate for judicial office in

a contested race (1) must receive at least 60% qualified votes of the total number of qualified and unqualified votes cast towards his candidacy; and (2) must receive not more than 85% "don't know" of the total number of votes cast toward his candidacy.

d. The Trustees, based upon the formula, shall then determine the total number of divisions in which there is at least one candidate, either opposed or unopposed, who is Fund Qualified to receive contributions from the Fund in the divisions of the Third District Court of Appeal of Florida, and the Circuit Court and the County Court of the Eleventh Judicial Circuit. The total funds of the Trust Fund received seven days from the date of the certification of the judicial poll shall then be prorated among such divisions provided, however, that 25% of the total funds received shall first be allocated to the County Court divisions and the remainder to all other eligible divisions. Should the funds received for each of those divisions exceed the qualifying fee for said divisions, the excess of funds over and above the total amount of the qualifying fees shall then be redistributed pro-rata to all divisions in which there are opposed Fund Qualified candidates.

e. As to each such division in where there is only one Fund Qualified opposed candidate, said candidate shall received the entire amount of funds allocated to his division. As to each division in which there is more than one Fund Qualified candidate, the funds for that division shall be distributed pro-rata to all such Fund Qualified candidates in that division.

11. In recognition of the time of this Resolution in relation to the now pending election, for the 1972 election only, any and all persons whether judges or members of the practicing bar desiring to contribute to or participate in this Trust Fund wherein they have already paid or received campaign contributions from sources other than this fund, may voluntarily participate in this fund by signing the pledge card at the required time as herein set forth, and by further agreeing that (1) as of the time of signing they will thereafter honor the pledge and (2) if they have been the recipients of funds prior to signing their pledge, they will then return on a pro-rata basis to all contributors all funds received from such contributors to the extent that such funds are matched or exceeded by monies received from the Trust Fund.

12. After distribution of funds in accordance with the foregoing formula up to the maximum amount permitted by the applicable election laws,

any surplus funds shall be retained in the Trust Fund in an interest bearing account for distribution at the next following judicial election.

13. In the published results of the judicial poll, the fact of whether or not a judge or candidate participated in the Trust Fund will be conspicuously and prominently set forth.

14. All members voting on the poll shall be advised in writing at the time they receive their ballots of the existence of the Trust Fund and its relationship to the poll.

15. All candidates in opposed races shall be advised in writing by the Trustees of the Dade Judicial Trust Fund that they may submit a brief biographical sketch setting forth their professional qualifications and background, in a general form to be approved by the Dade Judicial Trust Fund Committee, which information shall then be published by the Dade Judicial Trust Fund in the Miami Review within a reasonable time after they are received and prior to the final return date of the judicial poll, the payment for such publication to come from the Trust Fund. At the discretion of the Trustees, funds may also be used to publish such biographical sketches in an additional daily newspaper of general circulation, provided that all candidates who timely submit their sketches are treated equally.

16. It is specifically decreed to be the policy of the Dade Judicial Trust Fund that no candidate or person voting in the poll may actively solicit the vote of or attempt to influence the vote of any person with respect to his vote in the judicial poll.

17. Recognizing the extremely limited time which is presently available to implement this plan for the pending election, but deeming it to be in the best interest of the Bar to attempt to implement this plan at this time, the Dade Judicial Trust Fund Committee is specifically directed to review the amount of monies contributed to the Trust Fund at the time of certification of the poll, in light of the results of the Poll and the number of candidates determined to be Fund Qualified. Should the Committee then determine that the monies received are insufficient to meet the intended purpose of this plan, it may then, in its discretion, either apply the monies available only to Fund Qualified candidates who have opposition, or, if the monies available are determined inadequate even for that purpose, then the Committee shall immediately release all candidates and contributors from their pledges and allow all contributors, upon request, to have their monies returned to them.

18. The Trustees of the Dade Judicial Trust Fund are specifically authorized to spend monies from the Trust Fund for the purpose of

publicizing this plan, provided that such action receives the prior approval of the Dade County Bar Association Tax Committee.

19. The Dade Judicial Trust Fund Committee shall have continuing liaison of the activities of the Trust Fund and shall receive reports from the Trustees as to the implementation of this plan.

20. The Dade Judicial Trust Fund Committee shall be appointed by the President of the Dade County Bar Association with the consent of the Board of Directors. In addition to the authority hereinbefore granted to the Dade Judicial Trust Fund Committee, said Committee shall make all policy decisions with respect to the operation of the Trust Fund and the Trustees of the Dade Judicial Trust Fund upon certification by the President of the Dade County Bar Association as to the membership of said Committee, may rely upon said Committee as to said policy decisions.

Executed this 21st day of August, 1972, at Miami, Florida.

DADE COUNTY BAR ASSOCIATION

in the

Supreme Court

of the

United States

October Term, 1977

Case No. 77-1677

GERALD RICHMAN,

Petitioner,

vs.

ROBERT L. SHEVIN,
Attorney General of the State of Florida,
RICHARD E. GERSTEIN,
State Attorney for the Eleventh
Judicial Circuit and the ELECTIONS
COMMISSION of the State of Florida,

Respondents.

RESPONSE OF RESPONDENT FLORIDA ELECTIONS COMMISSION

STEPHEN MARC SLEPIN, ESQUIRE

Slepin & Slepin
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(904) 878-2168

TOPICAL INDEX

TABLE OF AUTHORITIES

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RESPONSE OF RESPONDENT FLORIDA ELECTIONS COMMISSION

The Florida Elections Commission, Respondent, categorically disagrees with Petitioner's "Statement of the Case," and denies categorically that Florida has "prohibited . . . contributions" by lawyers to a political committee—i.e., the Dade Judicial Trust Fund and/or Dade Judicial Trust Fund committee of the voluntary Dade County Bar Association.

STATEMENT OF CASE AND FACTS

The selectivity indulged by Petitioner in his "Statement of the Case" must herein be redressed.

1. The Attorney General of Florida in 1972 flatly and several times warned the Dade Judicial Trust Fund [1] that:

A. The Dade Judicial Trust Fund is a political committee under Florida law, and

B. It is, as such, subject to the dollar limitations imposed by statute upon political committee contributions to candidates.

That opinion of the Attorney General was incorporated in the 1977 trial court proceedings at ¶13, Stipulation of Facts (p. 48 of Petitioner's appendix herein) and is incorporated herein as Exhibit A-1.

2. In 1976, the Florida Elections Commission received a sworn complaint against the political committee of Dade County lawyers known as the Dade Judicial Trust Fund, investigated same, tried to work with the so-called Dade Judicial Trust Fund political committee, held hearings and entered notice of determination.

3. Gerald Richman—not the five "Trustees" nor the "Judicial Trust Fund Committee" chairman—filed

[1] The Dade Judicial Trust Fund, so-called, is a function of the voluntary Dade County Bar Association, and the policies of the escrow arrangement (Trust Fund) are within the plenary discretion of the Dade County Bar Association's Judicial Trust Fund Committee. See appendix to Brief of Attorney General Shevin for the Agreement.

suit in the Circuit Court of and for the Second Judicial Circuit of Florida, suffered entry of the order of May 3, 1977, submitted and had entered the final judgment of May 12, 1977, and appealed to the Supreme Court of Florida.

The Supreme Court of Florida, relying upon this Court's Opinion in Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976), and upon analysis of Florida Statutes, Chapter 106, validated the Florida law and affirmed the trial court. Rehearing was denied. See, Richman v. Shevin, et al., 354 So.2d 1200 (Fla. 1977), rehearing denied.

Chapter 106, Florida Statutes, 1975, provided in pertinent part:

Section 106.011(1)—"Political Committee" means a combination of two or more individuals, or a person other than an individual, the primary or incidental purpose of which is to support or oppose any candidate . . . and which accepts contributions or makes expenditures during a calendar year in an aggregate amount in excess of $100. . . .

Section 106.011(3)—"Contribution" means (a) A gift, subscription, conveyance, deposit, loan, payment or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election. . . .

> Section 106.08(1)—No person or political committee shall make contributions to any candidate or political committee in this state, for any elections, in excess of the following amounts: (a) To a candidate for countywide office or to a candidate in any election conducted on less than a countywide bases, $1,000 . . .[2]

Petitioner at p. 5, in the first paragraph thereof, declares that a judicial trust fund was established to insulate lawyers from direct financial contact with judicial candidates, but neglects to observe and fully to inform this Honorable Court, that at the trail of this cause it was conceded that in 1976, Mr. Richman excluded Supreme Court of Florida races from the Fund in order to assist a friend who was running for state judicial office. (The trial transcript reflects this.) The same critical omission is indulged at numbered paragraph 1 at page 5 of the Petition.

Petitioner materially misleads this Honorable Court, however inadvertently, when at numbered paragraph 3 and footnote numbered 1 (page 5 of Petition), he declares that "no lawyer has given or will be permitted to give that much money [$1,000] through the Fund" and that no lawyer has at any time contributed more than $69.54 to any candidate through the Fund. In point of fact, as demonstrated by the official and public records of the State of Florida attached hereto and incorporated herein

[2]It shall be shown hereinafter that the Dade Judicial Trust Fund, by certain unnamed or anonymous persons, had and exercised the authority to pick and choose which judicial races would be included within or excluded from the operation of the Fund, and that such discretion was exercised at all times pertinent hereto, negating the concept of a fixed and publicly known standard for contributions to candidates.

as Exhibit A-2, substantial sums of money in excess of $7,000 per candidate have been contributed by the political committee known as the Dade Judicial Trust Fund to individual candidates for judicial office.

At page 6 of the Petition, Petitioner asserts that the amounts of money contributed by the political committee to candidates are determined by a poll of all lawyers admitted to the Bar in Dade County, over four-thousand persons—but neglects to apprise the Court that the record is bereft of evidence of how many of those persons in the critical 1976 elections voted or determined the amounts of money to be contributed to judicial candidates.

At page 7, numbered paragraph 8, Petitioner erroneously declares that no negative reaction to the reports of the Dade Judicial Trust Fund was made by state authorities prior to the investigation conducted by the Florida Elections Commission. This is, unfortunately, an attempt to blink the 1972 Opinion of the Attorney General of Florida flatly prohibiting the Dade County lawyers' political committee from violating Florida election laws by making contributions in excess of statutorily specified amounts.

Petitioner, again, at footnote number 5 (page 8 of Petition), declares that Gerald Richman was entitled to contribute $5.21 plus $994.79 to a judicial candidate, and blinks the fact that Gerald Richman did <u>not contribute</u> $5.21—but that the $5.21 represents a factored figure calculated retrospectively by the lawyers' political committee, after it had received Gerald Richman's dollars and had figured out how much it wished to attribute, retrospectively, to each contributor for each candidate found "qualified."

At page 9, the Petitioner misstates the facts by declaring that the operation of the Fund "was first called into question by the Florida Elections Commission." That is, factually, false. The operation of the Fund was first called into question and seriously challenged by the Attorney General of Florida in 1972, whereafter the distinguished citizens of Dade County who comprise and have comprised the Dade Judicial Trust Fund systematically ignored the Florida Statutes as well as the warnings of the Attorney General.

At page 11 of the Petition, Petitioner alleges that there was "a limited amount of testimony" elicited before the trial court, but omits to bring to the attention of this Court that the option was with the Petitioner and that he alone testified.

I.

A PROHIBITION OF CONTRIBUTIONS THROUGH THE JUDICIAL TRUST FUND ESCROW ARRANGEMENT VIOLATES THE PETITIONER'S FIRST AMENDMENT RIGHTS OF FREE SPEECH.

Florida law never has prohibited—and does not now prohibit—"contributions through the judicial trust fund escrow arrangement" [i.e., political committee].

Petitioner's first point is not merely "loaded" in the classic sense, but is an exercise in paraleipsis.

Section 106.011(2), Florida Statutes, 1975, defined a "political committee" as two or more persons combined—primarily or incidentally—to support or oppose any candidate and accepting contributions or making expenditures in a calendar year of $500 or more.

Anyone—lawyer, doctor or indian chief—was free, is free, to contribute to (a) candidates or (b) political committees.

To be sure, §106.08(3), Florida Statutes, 1975, flatly prohibited any person from giving in the name of another—lest the whole purpose of "Who Gave It, Who Got It" be foiled.

But Gerald Richman's Dade Lawyers' committee was at all times pertinent entitled to contribute to judicial candidates up to the statutory limits set out at §106.08(1), Florida Statutes, 1975.

There is no need to quote this Court's Opinion in Buckley v. Valeo, 424 U.S. 1 (1976)—statutory limitations upon the amounts which may be contributed to candidates, by individuals or by political committees, are not unconstitutional.

One cannot fault this Dade County political committee of lawyers for wanting "political clout" over and above doctors' committees, labor committees, etc. Indeed they urged Florida's Supreme Court to deem lawyers to be unique and uniquely privileged to escape Florida's comprehensive election law regimen.

Additionally, it won't do to argue what Petitioner or some of his associates will do to limit monies into or out of their political committee—the record cannot be blinked nor overcome by Mr. Richman's prognosticatory assertions.

Where single-source contributions to candidates (by one individual, one corporation, one political committee) are limited by a dollar amount, the State of Florida has expressed a compelling interest, and it need not thereby have purported to have solved all problems of election corruption or perversion.

Yet even in the case sub judice the clear testimony was that Petitioner spoke with a Florida Supreme Court candidate who didn't want his contributions subjected to the "trust agreement" and, therefore, Florida Supreme Court races were peremptorily excluded from the Dade political committee's beneficence. Hardly a reflection of the program's granite integrity or its unsusceptibility to abuse on behalf of selected candidates.

Of course, Florida has a compelling interest in the regulation of single-source "contributions" to candidates, even as individuals may make unlimited "expenditures" on behalf of candidates per §106.071, Florida Statutes, 1977, and Buckley v. Valeo, op. cit.

II.

PROHIBITION OF CONTRIBUTIONS THROUGH THE JUDICIAL TRUST FUND ESCROW ARRANGEMENT VIOLATES THE PETITIONER'S FIRST AMENDMENT RIGHT OF FREE ASSOCIATION.

There is not a sentence in Chapter 106, Florida Statutes, nor in our Supreme Court's Opinion in Richman v. Shevin, et al., 354 So 2d 1200 (Fla. 1977), reh. den., which "prohibits individuals from joining with others to escrow money to support judicial candidates . . ." as alleged at p. 19, PETITION FOR WRIT OF CERTIORARI.

Lawyers in Dade County—like labor's COPE, like businessmen's ASSOCIATED INDUSTRIES OF FLORIDA, like doctors' FLA-PAC, etc.—may associate in any political committees of their choice. They always could.

It cannot be, surely, the suggestion of Petitioner that Kusper v. Pontikes, 414 U.S. 51 (1973), must be read to conflict with Buckley v. Valeo, 424 U.S. 1 (1976)—with the resolution being that 2 or 20 Dade lawyers can associate qua political committee and be thereby entitled to contribute $3,000 or $9,000 or $30,000 to selected candidates.

Yet, this is the thesis excogitated by Petitioner under this head.

No limitation whatsoever has been imposed upon these lawyers' "right of association."

III.

THE FLORIDA STATUTE IS OVERBROAD.

Petitioner concedes, at p. 24, the constitutionality of state limitation of dollar volume of contributions by single-sources.

Yet, he alleges, Chapter 106, Florida Statutes, is overbroad because he and his committee colleagues do not intend to be corrupt, nor to corrupt selected candidates, nor to allow terribly large contributions (into or out of his committee?).

This won't do.

Petitioner's group is plainly a political committee, and no matter their good intentions or promise of making benign internal procedures, the State of Florida has the right to say to this lawyers' committee or to COPE, etc., single-source contributions by you to judicial candidates (and legislative candidates, inter alia) are limitable and are limited.

There is no overbreadth in such an explicit, focused statutory principle.

CONCLUSION

Chapter 106, Florida Statutes, reflects this Court's decision in Buckley v. Valeo, op. cit., and the Petition should be denied.

/s/ STEPHEN MARC SLEPIN

Stephen Marc Slepin, Esquire

SLEPIN & SLEPIN
Suite 201 Ellis Building
1311 Executive Center Drive
Tallahassee, Florida 32301
(904) 878-2168

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief has been furnished by United States Mail this 20th day of June, 1978, to:

Honorable Robert Shevin
Attorney General
The Capitol
Tallahassee, Florida 32304

Mr. James Whisenand
Deputy Attorney General
The Capitol
Tallahassee, Florida 32304

Talbot D'Alemberte, Esq.
Steel, Hector & Davis
1400 Southeast First
National Bank Building
Miami, Florida 33131

/s/

Stephen Marc Slepin, Esquire

SLEPIN & SLEPIN
Suite 201 Ellis Building
1311 Executive Center Drive
Tallahassee, Florida 32301
(904) 878-2168

STATE OF FLORIDA
DEPARTMENT OF LEGAL AFFAIRS
OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FLORIDA 32304

September 8, 1972

Honorable Raymond G. Nathan
1110 Dade County Courthouse
73 West Flagler Street
Miami, Florida 33130

Dear Judge:

You have called me and indicated that the Dade County Bar Association has collected funds from various lawyers in Dade County which will constitute a "trust fund" to be contributed to the judicial candidates in the county who have received a rating of "qualified" from the members of the Bar in the county. It is desired to distribute these trust funds equally among such candidates. You have requested my view as to whether the Bar Association may contribute $1,400 to each of such candidates; and, if so, must the candidate list the name of each lawyer who contributed to the trust fund.

Subsection (9)(a) of Section 99.161, relates to contributions by political party committees and by an "organization, group, or other committee organized in support of a candidate" and requries such organizations or groups to "make a full and complete report of all moneys or other things of value contributed to them or to any member of such body, and such report shall contain the names and mailing addresses of each of the contributors and the

amount contributed by each" as well as a statement of the expenditures made by the group to the date of the report. This has been discussed with Dorothy Glisson and she agreed that the group of lawyers who have made contributions to the Bar Association Trust Fund in behalf of qualified judicial candidates would probably be within the purview of this statute. Mrs. Glisson still has some doubt but agreed that since the money has already been collected in the name of the Dade County Bar Association Trust Fund, it would be all right to go ahead and make the contributions to the various candidates in the name of the Dade County Bar Association Trust Fund.

The "full and complete report" referred to above, containing the names and addresses of the contributors and amounts contributed by each to the group, apparently suffices for "disclosure" purposes; and I find nothing in the statute to require the group to disclose this information to the candidate when making the contribution as a "group." Mrs. Glisson agreed that even though the statute requires that the reports of groups whose members reside only within the county must be made to the circuit court clerk, it would help her records to have a copy of such reports. They are required to be filed monthly, at this point (after the qualifying deadline has passed) until the month following the general election, and must include expenditures as well as contributions.

Subsection (d) of Section 99.161(9) authorizes a political party executive committee to contribute to another executive committee or to "individual candidates of that party

in general elections" more than $1,000; and this express provision should probably be interpreted, under the "inclusio unius est exclusio alterius" rule, as prohibiting contributions of more than $1,000 to an individual candidate by any other group or organization. No opinion of this office nor of the courts has been found on this point.

The only other alternative that I could conceive is that each lawyer could contribute directly to each judicial candidate whatever his portion of the $1,400 individual contribution would be. In other words, if one hundred lawyers are participating in the trust fund, each lawyer would contribute $14 to each judicial candidate. The fact that the amount actually contributed by him to the candidate was based upon an agreement among various lawyers to contribute an equal amount should be of no concern to the Division of Elections or to the voters, for whose benefit the "full disclosure" requirements of the Election Code were apparently enacted. Mrs. Glisson was in agreement that this method would comply fully with the Code.

In conclusion, the Dade County Bar Association Trust Fund could contribute $1,000 to each judicial candidate. The Trust Fund in this situation would be a "group" or "organization" within the purview of Subsection (9) of Section 99.161, Florida Statutes, and the campaign treasurer of each candidate would list the Trust Fund as the contributor, without listing each separate lawyer as a contributor. As noted above, such organizations are required to "make a full and complete report" of all con-

tributions received from members of the organization, including their names and addresses and the amounts contributed by each. In addition, the Trust Fund must file the reports required by this section. While the reports are required by the statute to be filed only with the circuit court clerk, if all members of the group or organization reside within the county, it is suggested that copies thereof be filed also with the Department of State, as the offices in question are required to qualify with that department.

If it is desired to contribute more than $1,000 to each candidate, each attorney participating in the Trust Fund should make an individual personal contribution to each judicial candidate of whatever amount his portion of the $1,400 would be when divided up among the participating attorneys. In this situation, each contributing attorney would be listed by the campaign treasurer as a contributor, with the amount of his contribution.

Sincerely,

/s/
ROBERT L. SHEVIN
Attorney General

RLS/Ws

bc: Dade County Bar Association Headquarters

CAMPAIGN TREASURER'S REPORT

EXPENDITURES

Name Dade Judicial Trust Fund
(Candidate or Committee)

Address 111 N. W. First Ave., #214, Miami, Fla.

Candidate For

Expenditures Previously Reported ..... $

Expenditures This Report ..... $

Total Expenditures To Date Of This Report ..... $

LIST ALL EXPENDITURES, AUTHORIZED, INCURRED OR MADE DURING THIS PERIOD

Date	Full name, residence and mailing address, if any, occupation and principal place of business.	Purpose of Expenditure	Amount
8-27-76 M	Dominic Koo, 1351 N. W. 12 St., Miami, Fla. Judge, Miami, Fla.	Qualifying fee for 11th Circuit County Court election	$ 1,700.00
8-28-76	Morton Lee Perry, 1351 N. W. 12 St., Miami, Judge, Miami, Fla.	Qualifying fee for 11th Circuit County Court election	$ 1,700.00
8-31-76	Tillman Pearson, 2001 S. W. 117 Ave., Miami, Fla., Judge, Miami Fla.	Qualifying fee for 3rd District Court election	$ 1,900.00
8-31-76	Norman Hendry, 2001 S. W. 117 Ave., Miami, Fla., Judge, Miami Fla.	Qualifying fee for 3rd District Court election	$ 1,900.00
8-30-76	Stuart M. Simons, 6321 S. W. 91 Avenue, Miami, Fla., Judge Miami, Fla.	Qualifying fee for 11th Circuit County Court election	$ 1,700.00

Campaign Treasurer Initial Here

Candidate or Chairman Initial Here

CAMPAIGN TREASURER'S REPORT

EXPENDITURES

Name DADE JUDICIAL TRUST FUND
(Candidate or Committee)

Address c/o 111 N. W. First Avenue, #214, Miami, Fla. 33128

Candidate For

Expenditures Previously Reported ..... $ 39,701.45

Expenditures This Report ..... $ 1,500.00

Total Expenditures To Date Of This Report ..... $ 41,201.45

LIST ALL EXPENDITURES, AUTHORIZED, INCURRED OR MADE DURING THIS PERIOD

Date	Full name, residence and mailing address, if any, occupation and principal place of business.	Purpose of Expenditure	Amount
9-21-76	Harvey L. Goldstein, 1465 N.W. 19 Terrace #216, Miami, Fla. Lawyer, Miami, Fla.	Campaign Funds for 11th Circuit County Court second primary election	$ 1,500.00

Campaign Treasurer Initial Here

Candidate or Chairman Initial Here

CAMPAIGN TREASURER'S REPORT

EXPENDITURES

Name DADE JUDICIAL TRUST FUND
(Candidate or Committee)

Address 111 N. W. First Avenue @214, Miami, Fla. 33128

Candidate For

Expenditures Previously Reported ..... $ none

Expenditures This Report ..... $ 37,631.90

Total Expenditures To Date Of This Report ..... $ 37,631.90

LIST ALL EXPENDITURES, AUTHORIZED, INCURRED OR MADE DURING THIS PERIOD

Date	Full name, residence and mailing address, if any, occupation and principal place of business.	Purpose of Expenditure	Amount
8-18-76	DADE COUNTY BAR ASSOCIATION 111 N. W. 1 Ave., Miami, Fla.	Reimburse postage, printing for three solicitations	$ 3,397.88
8-18-76	REVIEW PRINTING COMPANY P O Box 589, Miami, Fla. 33101	Printing envelopes pledge cards, trust agreements	$ 434.02
8-18-76	Miami Review & Daily Record P O Box 589, Miami, Fla. 33101	Publication of judicial candidates biographies	$ 400.00
8-30-76	Frederick N. Barad, 1121 Crandon Blvd., Miami, Fla. Judge Miami, Fla	Qualifying fee for 11th Circuit County Court election	$ 1,700.00
8-30-76	Herbert M. Klein, 6003 Turin St., Miami, Fla., Judge, Miami Florida	Qualifying fee for 11th Circuit Court election	$ 1,800.00
8-30-76	Edward H. Swanko, 2718 Alhambra Circle, Coral Gables, Fla Judge, Miami, Fla.	Qualifying fee for 11th Circuit County Court election	$ 1,700.00
8-30-76	John H. Smith, 1351 N. W. 12 St., Miami, Fla. Judge	Qualifying fee for 11th Circuit County Court election	$ 1,700.00
8-30-76	Harvey L. Goldstein, 1485 N. W. 19 Terr., Miami, Fla., Lawyer Miami, Fla.	Campaign funds for 11th Circuit County Court election	$ 7,950.00
8-27-76	Robert M. Deehl, 1351 N. W. 12 St., Miami, Judge, Miami, Fla.	Qualifying fee for 11th Circuit County Court election	$ 1,700.00
8-27-76	Marshall H. Ader, 2800 Brickell Ave., Miami, Lawyer, Miami, Fla.	Campaign funds for 11th Circuit County Court election	$ 7,950.00

Campaign Treasurer Initial Here

Candidate or Chairman Initial Here

elec. 7b

EXHIBIT A-2

CAMPAIGN TREASURER'S REPORT

EXPENDITURES

Name DADE JUDICIAL TRUST FUND
(Candidate or Committee)

Address 111 N. W. First Avenue

Candidate For

Expenditures Previously Reported ..... $ 19,700.00

Expenditures This Report ..... $ 10,000.00

Total Expenditures To Date Of This Report ..... $ 29,700.00

LIST ALL EXPENDITURES, AUTHORIZED, INCURRED OR MADE DURING THIS PERIOD

Date	Full name, residence and mailing address, if any, occupation and principal place of business.	Purpose of Expenditure	Amount
9-26-74	George E. Orr 8235 S. W. 99 St., Miami, Attorney, Miami	Contribution for Judicial Campaign	$ 5,000.00
9-26-74	Robert Metzker 8460 S. W. 43 St. Miami, Attorney, Miami	Contribution for Judicial Campaign	$ 2,500.00
9-26-74	S. Harold Skolnick 6521 S. W. 122 St., Miami, Attorney, Miami	Contribution for Judicial Campaign	$ 2,500.00

Campaign Treasurer Initial Here

Candidate or Chairman Initial Here

elec – 7b

EXHIBIT A-2

DADE JUDICIAL TRUST FUND
EXPENDITURES
September 3, 1974 through September 9, 1974

All distributions made to candidates for Judicial office in the 11th Judicial Circuit of Florida (Dade County). All distribution made Septe

9-6-74	Raymond G. Nathan, District Court of Appeal Justice Building, Miami, Florida	1,900.00
9-5-74	H. Paul Baker, Circuit Judge, Justice Building, Miami, Florida	1,800.00
9-5-74	James H. Earnest, Circuit Judge, Dade County Courthouse, Miami, Florida.	1,800.00
9-5-74	Boyce F. Ezell, Jr., Circuit Judge, Dade County Courthouse, Miami, Florida	1,800.00
9-5-74	Richard Fuller, Circuit Judge, Dade County County Courthouse, Miami, Florida	1,800.00
9-5-74	Seymour Gelber, Circuit Judge, 800 N. W. 28 Street, Miami, Florida	1,800.00
9-5-74	Edward S. Klein, Circuit Judge, Dade County Courthouse, Miami, Florida	1,800.00
9-5-74	John Red Lake, Circuit Judge, Dade County Courthouse, Miami, Florida	1,800.00
9-6-74	Alfonso C. Sepe, Circuit Judge, Justice Building, Miami, Florida	1,800.00
9-6-74	Calvin Mapp, County Court Judge, Justice Building, Miami, Florida	1,700.00
9-5-74	Henry L. Oppenborn, County Court Judge, Justice Building, Miami, Florida	1,700.00
		$ 19,700.00

EXHIBIT A-2